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SEXUAL ASSAULT BEFORE AND AFTER THE 1983 REFORM: AN EVALUATION OF PRACTICES IN THE JUDICIAL DISTRICT OF MONTREAL, QUEBEC

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The views expressed herein are solely those of the author
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INTRODUCTION

Bill C-127 came into force on January 4, 1983. It changed the Criminal Code significantly with respect to sexual assault. The first chapter of our report outlines what these changes are.

Our concern was to evaluate the impact of these changes on victims as well as assailants, along with the agencies operating within the Judicial District of Montreal. This task was assigned to us by the Department of Justice Canada, which was underwriting similar studies in other Canadian cities.

This study involved:

1) describing sexual assault and those involved;

2) describing the procedures followed within the justice system and by social services before and after the Act;

3) evaluating Bill C-127's impact on these procedures;

4) compiling victims' points of view;

5) analyzing the opinions of the principal agencies involved with victims.

The research specifications provided by the department called for a number of research techniques (surveys, observation, in-depth interviews, content analyses) taking the quantitative as well as the qualitative approach. Each of these techniques was used.

Initially, this report offers an outline of the situation (in law and within psycho-social services) along with the overall problem addressed by the study and some general comments regarding methodology. A description of the results follows in this order: first, the quantitative data obtained from studying the records of the police, a victim aid centre and the court; second, the qualitative data arising from interviews and observation. Third, some conclusions on the impact of Bill C-127, in addition to summarizing and organizing the information collected. We also stressed the results that seemed most significant.

PART ONE

PRELIMINARY IDEAS: THE STATE OF THE ISSUE, THE STUDY'S PROBLEM AREA, AND THE METHODOLOGICAL APPROACH

For a full understanding of the context in which this evaluative study was carried out, the state of the law in Canada, before and after the Act was passed in 1983, must be defined and the significance of the legislative changes contained in Bill C-127 assessed. This analysis establishes the general context of Canadian research into Bill C-127's impact.

More specifically, where the Montreal Judicial District is concerned, it also seemed important to us to ascertain what psychological and social services were available to victims. Not only did the study's requirements call for this information, but it was also foreseen in the actual planning of our research. The results of our inquiries are set forth in Chapter II.

The problem area has been defined on the basis of the abovementioned considerations, the state of the law and available resources, relevant writings and the departments' expectations. In a third chapter, we review our general methodological approaches very briefly. Detailed descriptions of the methods used in each data-gathering exercise, as well as for the subsequent analysis, will be found in later chapters.

1.0 STATE OF THE ISSUE: THE LAW

To put the problem in perspective, we think it would be useful to begin with a brief analysis of the amendments made to the Criminal Code in the 1983 reform.[1] The principal objective of these amendments was to replace the offences of rape, attempted rape and indecent assault with various sexual assault offences. In so doing, the lawmakers shifted the emphasis to the assault-related aspects of the offence, rather than the sexual aspects. The following outline, therefore, is not a comprehensive evaluation of all sections of the Criminal Code dealing with sexual offences, but only those provisions of the Code relevant to this study.

First, we will look at the state of the law just prior to the reform, underscoring dissatisfaction with the law at that time. Then, we will focus on some of the significant changes brought about by passage of Bill C-127.

1.1 State of the Law Just Prior to the 1983 Reform

This analysis is in three stages. First, we will address the principles underlying the very nature of the offences. Then, we will examine the rules as they affect the parties to the offence, and, finally, those that govern trial procedures.

1.1.1 Nature of the offences

1.1.1.1 Necessary elements

Sexual offences were found in Part IV of the Criminal Code under the title: "Sexual Offences, Public Morals and Disorderly Conduct." The main offences of this kind were rape, attempt to commit rape and indecent assault.

Section 143 defined rape as sexual intercourse without consent or with no valid consent in certain specifically listed circumstances. Consequently, to get a conviction, the prosecution had to prove two things:

- First, that there had been penetration of the vagina by the penis, even by the slightest degree. This requirement followed from the definition given to the term "sexual intercourse" in s. 3(6) of the Criminal Code. Thus, oral and anal penetration, as well as vaginal penetration with a finger or objects, did not apply. It is easy to understand the difficulties of making a case under s. 3(6). As a result, hearings were complicated and delayed. But, above all, parading such intimate details in open court was often embarrassing to the complainant and sometimes gave rise to pitiless cross-examination;[2]

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[1] The reader can find the texts of these legislative provisions in Appendix A of this report.

- Second, that the complainant had not consented to the intercourse or that her consent was not valid. In this connection, it is worth noting that since lawmakers had not felt it advisable to define consent, its definition was, in the final analysis, left to the courts.

In contrast to the crime of rape, a host of acts with sexual overtones constituted indecent assault under s. 149 and s. 156 of the Criminal Code. Paragraph (2) of s. 149, however, dealt with no valid consent by the victim in a similar fashion to what s. 143 had to say concerning rape, which resulted in the difficulties of interpretation already mentioned. We must also mention s. 140 which stipulated that if the offence of indecent assault was committed on a person under age 14, the fact of that person's consent was not a defence to the charge.

Finally, attempt to commit rape was dealt with in s. 145 of the Criminal Code. The sole point of this specific charge was to provide a more severe sentence than that generally provided for attempts.[3]

1.1.1.2 Sentences

The person found guilty of rape was liable to imprisonment for life.[4] Attempted rape was punishable by imprisonment for a maximum of ten years.[5] As for indecent assault, it was dealt with differently, depending on whether it was committed against a female or male.[6] In the first instance, the maximum sentence was five years' imprisonment, while in the second, the accused was liable to ten years imprisonment.

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[2] For an example of cross-examination, see: Christine BOYLE, "Sexual Assault and the Feminist Judge," (1985) 1 Canadian Journal of Women and the Law, 93, 96.

[3] See CrC s 421 and compare with s 145.

[4] CrC s 144.

[5] CrC s 145.

[6] CrC s 149 and 156

1.1.2 Parties to the offence

The Criminal Code provisions showed definite discrimination based on sex and marital status.

In fact, under s. 143 of the Code, the dynamic of rape inevitably involved a male assailant and a victim of the female sex.

Moreover, a husband enjoyed immunity from prosecution in this area where his wife was concerned: The crown was reduced to charging a husband with rape only if he had participated in an assault on his wife by another man.

Finally, let us emphasize that although the Code prohibited indecent assault on a woman, regardless of the sex of the offender[7], only a man could be prosecuted for the same crime committed against another man.[8]

1.1.3 Hearings

Here we will look at some of the rules of evidence in force at the time, as well as the restrictions placed by the Code on the public nature of the hearing.

1.1.3.1 The rules of evidence

Corroboration

In 1976, s. 142 of the Criminal Code had been amended to allow a guilty verdict for certain sexual offences, including rape and indecent assault, in the absence of evidence corroborating the victim's statements. This amendment did not, however, produce the desired results. Some judges, basing their views on the rules of common law, still insisted on corroboration, or else, warned juries that in the absence of such evidence, a guilty verdict would be shaky.

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[7] CrC s. 149.

[8] CrC s. 156.

Moreover, s. 139 of the Criminal Code clearly required corroborating evidence for certain other sexual offences (for example, sexual intercourse with a feebleminded person, incest...).

Recent complaints

Such a complaint was admissible to the extent that it had been made by the victim to a third party at the first reasonable opportunity after the assault occurred and was not obtained by the use of leading questions.

Although this rule of evidence, coming from the common law, was not an exception to the exclusion of hearsay, it added credibility to the victim's version. On the other hand, the fact that a complaint was not made immediately could lead to the presumption that there had been consent. For that very reason, this doctrine, which moreover applied only to trials for sexual offences, was liable to give rise to serious injustices.

Complainant's sexual behaviour

The amendment in 1976 of s. 142 of the Criminal Code also had the objective of limiting the defendant's right to question the complainant's sexual behaviour with other persons.[9] In this way, it was intended to put an end to the abuses created by the old section.

An accused wishing to ask questions on this subject, during his trial, had to give written notice to this effect. An in-camera hearing with the jury absent was then held to determine whether the questions would be allowed.

Section 142 had nonetheless been interpreted by the courts as making the complainant a compellable witness at this in-camera hearing.[10] What is more, evidence about the victim's previous sexual behaviour was used, in the very terms of the Criminal Code itself, to undermine the complainant's credibility, rather than decide whether there had been consent or not.

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[9] The old CrC s 142 applied only to offences of rape, attempted rape, unlawful sexual intercourse with a female person under age 14, and indecent assault (female). There was no comparable provision for the admissibility of evidence in cases of indecent assault committed on a male.

[10] In particular: R. v. Forsythe [1980] 2 SCR 268

1.1.3.2 Publicity

Section 442(1) of the Criminal Code permitted the exclusion of the public from the court room in certain circumstances.

In addition, under paragraphs (2) and (3) of the same provision, a publication ban covering not only the complainant's identity but also the gist of her statement could be made in rape and indecent assault cases.

1.2 Significance of the legislative changes

The 1983 reform was built around four basic principles that should be mentioned to give a better idea of the significance of the new provisions and the objectives that they were intended to reach. As expressed by Jean Chrétien, the justice minister, it is a matter of:[11]

- The protection of the integrity of the person. All persons have the right to control their own bodies. Therefore, the law must emphasise the personal injury resulting from sexual assault rather than seeing it only as a breach of public morals.
- The protection of children and special groups (i.e., "certain adults who do not have the ability to understand and make decisions about their sexual behaviour"): More severe penalties should be provided for offences committed against these categories of individuals.
- The upholding of public decency: The law should be conceived with a society in mind where people do not fear sexual assault. However, it should also allow consenting adults to behave as they choose.
- The elimination of sexual discrimination: Sexual offences should apply equally to persons of both sexes.

In studying the Criminal Code, as amended in 1983 in response to these four objectives, we will adhere to the plan already used in the first section.

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[11] Department of Justice Canada, Information document: sexual offences against the person and youth protection, Ottawa, 1980; p. 4-6.

1.2.1 Nature of offences

1.2.1.1 Necessary elements

Since January 4, 1983, Part VI of the Criminal Code, dealing with "Offences against the Person and Reputation," is where we find sexual offences. The legislator's goal of establishing parallels between this type of offence and crimes of violence is very clear. The new s. 244(2) clearly states that the necessary elements of each are the same.

The provisions dealing with rape (s. 143), attempted rape (s. 145) and indecent assault (s. 149) were, therefore, repealed and replaced by the offences of "sexual assault" (s. 246.1), "sexual assault with a weapon ..." (s. 246.2) and "aggravated sexual assault" (s. 246.3).

The seriousness of the offence is based on the violence suffered and no longer on sexual conduct as such. Thus, the concept of penetration, the essential element in the old crime of rape, no longer has the same importance. Whereas it used to be necessary to prove penetration for any conviction under s. 143, this idea now only relevant now only at sentencing.

As for consent, we find it defined in the new s. 244(3). The legislator intended this provision to clarify the law on this point. In fact, a comparison with the former text inclines us to believe that s. 244(3) is more than just a recasting, since the replacement of the idea of fraudulent representation related to the nature or quality of the act by the idea of "fraud" is liable to generate an increase in the range of situations covered by the definition. Nevertheless, this amendment still presents an advantage: The new definition of consent applies to all offences of a sexual nature, whereas s. 143 only applied in cases of rape.

Paragraph (4) of s. 244 deals with mistaken belief regarding consent. This provision codifies the principle handed down by the Supreme Court of Canada in the decision in Pappajohn v. The Queen, expressly stipulating that consideration must be given to the reasonable nature of the belief in determining the good faith of the accused, and the judge presiding in a jury trial should inform the jury of this.[12]

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[12] [1980] 2 SCR 120.

Section 246.1(2), which applies only to sexual offences, states that consent is in no case a defence when the complainant is under age 14, unless the accused is less than three years older.[13] This is an amendment to the old s. 140.

As for the notion of sexual assault itself, let us point out that in 1984, the New Brunswick Court of Appeal, in the case of Chase v. The Queen, had greatly restricted its meaning by deciding that such offence occurred only to the extent that certain parts of the victim's body, in particular her genital parts, were sought after.[14] From this standpoint, breast touching could not justify a conviction under s. 246(1). This interpretation, however, which meant a clear reversal relative to the previous law (the offence of indecent assault having always been defined more liberally), had been little or not at all followed by court authorities in the other provinces and has just recently been dismissed by the Supreme Court of Canada.[15]

This Court, in fact, clearly settled the issue by stating that the criterion for recognizing sexual assault is the perception that a reasonable person would have of the acts committed, taking into account all circumstances involved. The important aspect is not contact with certain specific parts of the anatomy but, more generally, the sexual, carnal context of the act. The assailant's intention is also a relevant determining factor. The Court concluded this statement of law by specifying that the intent required for this type of offence is a general one.

1.2.1.2 Sentences

Sexual assault is a hybrid offence punishable by imprisonment for six months and/or a fine, or a maximum of ten years' imprisonment, depending on the type of prosecution preferred.[16]

Sexual assault with a weapon carries a maximum prison sentence of 14 years (s. 246.2). Aggravated sexual assault, lastly, is penalized by imprisonment for life (s. 246.3).

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[13] Bill C-15 repealed this section, replacing it with s. 139(1).

[14] (1984) 13 CCC (3d) 187.

[15] R. v. Chase [1987] 2 SCR, 293.

[16] s. 246.1

1.2.2 Parties to the offence

The reform of the law brought about a "desexualization" of these offences. Since 1983, then, men and women have shared the complainant and assailant roles without discrimination.

What is more, the new s. 246.8 of the Criminal Code has ended the husband's immunity in prosecutions, thus removing the sexual submissiveness factor long associated with marital relationships.

1.2.3 Hearings

1.2.3.1 The rules of evidence

Corroboration

Section 246.4 of the Criminal Code expressly stipulates that corroboration is not required for a guilty verdict on sexual assault. In addition, the judge at the trial is not required to warn the jury. It is, therefore, possible for a jury to convict solely on the basis of the complainant's version.

Recent complaints

The rules for recent complaints have been abolished by the new s. 246.5. The general system of evidence thus prevails.

The complainant's sexual behaviour

The legislator's desire to protect the victim is clearly seen in the new rules of evidence regarding the complainant's sexual behaviour. This type of evidence was prone to abuse by the defence. Consequently, the conditions for its admissibility have been tightened (s. 246.6). Following a recent decision of the Ontario Court of Appeal, however, in which doubt was shed on this section's constitutionality, it has been ruled that the list of these conditions was not comprehensive since, in certain situations, applying this provision made a full answer and defence impossible.[17] For all these cases, the section will have to be declared invalid. The voir dire (where the complainant is not a compellable witness) is where it will be decided whether this evidence of sexual behaviour is prevented by one of the conditions in s. 246.6 or is needed for a just and fair trial. Thus, a very broad judicial discretion still exists at this level.

1.2.3.2 Publicity

To reconcile the two imperatives of protecting privacy and freedom of the press, the legislator has enacted that, as of now, only the complainant's identity must remain secret, while the facts of the case may be disclosed.[18]

1.3 Conclusion

For greater clarity, we repeat here in table form (Table 1) the list of offences involved and the penalties provided for them by Parliament.

The offences listed in this first table will be the ones dealt with throughout our research. We will attempt to discover the extent to which the changes in the law affecting the nature of the offences, the parties to the offence and the court process have influenced the practices and altered the opinions of the representatives of the justice system in the Judicial District of Montreal.

Before going into more detail on the problem area addressed and describing the methods used, we will focus on the state of the resources in the Judicial District of Montreal.

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[17] R. v. Seaboyer and Gayme, (1988) 37 CCC (3d) 155.

[18] s. 442(2), (3), (3.1).

Table 1 Sexual Offences Chosen for Study

PROVISIONS PRIOR TO THE 1983 REFORM:

- Rape (s. 143): punishable by imprisonment for life - repealed in 1983.

- Attempt to commit rape (s. 145): punishable by imprisonment for ten years - repealed in 1983.

- Sexual intercourse with a female under fourteen (s. 146(1)):* punishable by imprisonment for life.*

- Sexual intercourse with a female between fourteen and sixteen (s. 146(2)):* punishable by imprisonment for five years.*

- Indecent assault (female) (s. 149): punishable by imprisonment for five years - repealed in 1983.

- Indecent assault (male) (s. 156): punishable by imprisonment for ten years - repealed in 1983.

PROVISIONS SUBSEQUENT TO THE 1983 REFORM:

- Sexual assault simpliciter (s. 246.1): punishable by imprisonment for six months and/or a fine, or by imprisonment for ten years, depending on the type of prosecution.

- Sexual assault with a weapon... (s. 246.2): punishable by imprisonment for fourteen years.

- Aggravated sexual assault (s. 246.3): punishable by imprisonment for life.

- Sexual intercourse with a female under fourteen (s. 146(1)): punishable by imprisonment for life.

- Sexual intercourse with a female between fourteen and sixteen (s. 146(2)): punishable by imprisonment for five years.

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* These offences applied during our study. They have been replaced, however, by the provisions of Bill C-15 that came into force on January 1, 1988. For greater conciseness, in the rest of this report we will refer to these offences using the term "unlawful sexual intercourse."

2.0 POLICIES AND RESOURCES IN QUEBEC

The administration of justice and provision of social services are provincial jurisdictions. In this chapter, we set out to deal with the special characteristics of the system in Quebec and the area of the Montreal Urban Community, along with the neighbouring City of Laval. Before going on to describe the counselling and social services available in this area, let us first look at the provincial and local policies for handling sexual assault.

2.1 Provincial and Local Policies with Respect to Judicial Treatment of Sexual Assault

Quebec's justice minister has developed a series of directives for crown attorneys overseeing sexual assault cases. The policy is quite flexible. It applies only to the extent allowed by each judicial district's resources and caseload.

2.1.1 The crown attorney's role

Under this policy, the same crown attorney acts for the crown throughout the whole process. It is up to him/her to meet with the complainant and explain how the court system works, with special emphasis on cross-examination. He/she is supposed to use appropriate procedures, and in particular section 476 of the Criminal Code[1], to avoid unnecessary court appearances by the complainant. He/she will also, if appropriate in the case, use the (medical protocol) to buttress his/her evidence.

In Montreal, a line of conduct has also been adopted for handling these cases, and the policy is related in more than one respect to the provincial directives.

First of all, for the past three or four years, some crown attorneys at the Montreal Court House, most of them women, became specialized in sexual cases where children are involved on their own initiative.

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[1] Under this provision, an accused can be ordered to stand trial with the consent of the parties when the preliminary inquiry has not been completed or has not even taken place.

Under a recent reorganization of crown services, the competent authorities have decided to make this division of labour official with a team of six crown attorneys, including one male, that will henceforth deal exclusively with the full range of sexually-related matters. It is worth noting that similar teams operate in other areas of practice as well. This general reorganization is to come into effect in September, 1988.

Moreover, the department's directives are being complied with so that a single crown attorney will be assigned from now on from the start of proceedings (and sometimes as early as the police investigation stage) right to the end. This crown attorney will establish contact with the complainant as soon as the judicial process is set in motion and prepare the complainant for the court appearance.

2.1.2 The medical/legal kit

The medical/legal kit has existed in Quebec since 1984 and was further refined in 1987. The first version of the kit was developed under the Quebec government's Social Affairs and Justice departments, as well as the Council for the Status of Women. Cooperation was also lent by the doctors' Corporation professionnelle (Quebec Medical Association). Improvements contained in the new version reflect recommendations from the same bodies, and consultation with specialists in the area of sexual assault.

Sealed and numbered, the kits are permanently available in hospitals designated to admit sexual assault victims. Hospitals located in our area are supplied with kits by police. The objective with this kit was to systematize medical/legal examinations province-wide and collect evidence to expedite investigations and eventual court proceedings.

Before the medical/legal examination takes place, an atmosphere of trust and empathy should be established with the victim. The examination and its usefulness are explained to her. She then is asked to sign a consent form for the medical/legal examination.

2.1.2.1 The old medical/legal kit

In addition to the usual consent for examination and treatment, sexually-assaulted persons were to sign a consent form for medical/legal examinations in two parts: A and B.

The first part authorized the doctor authority to take samples to establish the nature of the assault and the identity of the assailant. The second authorized the doctor to notify the police of the assault and give them the samples and information. By signing this second part, the victim was laying charges that allowed the investigation to proceed.

Anyone who had already decided to lay charges was asked to sign both parts, prior to the medical/legal examinations. Hesitant victims were asked to sign the first part, before samples were taken, and the second, when the examinations were complete.

The first step in the examination involved collecting the victim's clothes to note their condition, analyze any stains and check for hair, including body hair, along with any other substance that might make it possible to identify the assailant. The person would undress on a large numbered sheet of white paper (1-A), which was then carefully folded to preserve all relevant items. Each item of clothing considered relevant for analysis was placed separately in a prenumbered paper bag (1-B to 1-M). The paper sheet and bags were then placed in a big polyethylene bag which was supposed to be sealed.

The second stage consisted in taking samples of all substances present on the victim's body. Only samples felt to be relevant, according to the victim's story, were taken. Thus, all foreign substances on the victim's body, as well as sperm deposits on the skin, were collected. Established procedure was to take about twelve of the victim's hairs. If fellatio had taken place, an oral sample was taken; otherwise, only a sample of the victimized person's saliva. All these samples were placed in envelopes provided for this purpose and then placed in the bag identified as Number 2.

The third and last stage included sampling from the vaginal and anal areas and cavities. Pubic hair that might contain deposits was cut and collected. The victim's pubic hair was combed to collect whatever other hairs or fibres might be there. Inside the vagina, foreign bodies, fresh semen and spermatozoa were sought. If anal penetration had occurred, a sample was taken from this area. A urine sample was also taken for alcohol and drug tests. The examination ended with a blood sample. All these pieces of evidence were placed in envelopes, test tubes or blade cases, and placed in bag number 3.

The medical/legal kit contained all the instruments needed for taking the various samples: comb, swabs and test tubes, blades and cases, syringes and catheters, paper, paper bags, envelopes and polyethylene bag. The various forms included one to be given to the person examined with information she might need.

When the examinations were over and Part B of the consent form had been signed by the victim, the doctor initialled the seals on the kit and the polyethylene bag in the presence of the peace officer. This police officer was given all the exhibits along with copies 2, 3 and 4 of forms 1, 3, 5, 6, 7 and 8. The peace officer then made sure that all this reached the police forensic laboratory with a request for a report which the officer had filled out.

2.1.2.2 The new medical/legal kit

Compared with the old one, the new version of the medical/legal kit is streamlined. No doubt this is why it contains no explanatory notes for the user guide.

We will not give a detailed description of this new kit, but merely emphasize those aspects which are new, different, or have been abandoned.

Thus, if the victim of sexual assault is alone, it is suggested that she be advised to call on someone else to accompany her. If the victim agrees, the worker herself can contact this person.

Medical/legal examinations will be given to a victim who has already decided to lay a charge with the police and agrees to the examinations. In such a case, she will sign the consent form provided for this purpose in one place, and not in two parts as with the previous version.

The kit no longer contains the large sheet of paper provided for the victim to stand on when she undresses. The paper bags for collecting stained and torn clothing are fewer in number, six instead of 12.

The new kit no longer specifies collecting the victim's hair, cutting pubic hair with deposits, or combing the pubic hair. The new kit now does not contain a comb.

The analyses requested are appreciably the same, except for the blood and urine tests. Evidence of alcohol or drugs is no longer sought. On the other hand, the urine sample will be used for a pregnancy test in the laboratory of the institution where the examinations are done. The police laboratory no longer analyzes urine. As far as blood tests, the police laboratory will be looking only for blood type, if samples have been taken.

We find virtually the same medical instruments in the new version of the medical/legal kit as in the old. The current kit, however, also contains a speculum.

The procedures for getting the medical/legal kit to the police forensic laboratory are practically identical, the only difference being that the doctor is not instructed to also initial the seal on the polyethylene bag with the victim's clothing. Also, the three copies of the forms given to the peace officer are numbered differently: 1a, 1b, 3, 4, 5a, 5b, 5c and 7. There are eight of these, instead of the six in the old kit.

The new version of the medical/legal kit was evaluated initially in three areas of the Province of Quebec: Laval, Lanaudière and Mauricie. This pilot project was completed in February, 1988.

At the same time as testing was under way in the designated areas, hospitals were using the old kits to exhaust the supply. As stocks ran out, they were replaced by the new kit.

The new version now appears to be available across the province.

2.1.3 Policy of the Montreal Urban Community Police Department

The police department has also developed an action policy which we will discuss in the third part of this report. In addition, Appendix B provides samples of the police operational procedures applicable during an investigation. Basically, police action is geared to aid and support for victims: transportation to designated hospitals, investigation approaches, etc.

2.2 Counselling and social services

This section outlines the various resources available in the Judicial District of Montreal for the adult victims of sexual assault. Initially, we will describe the designated medical clinics: the Hôtel Dieu Service for Victims of Sexual Assault and the Montreal General Hospital clinic. It should be noted that two centres concentrate on sexually abused children and adolescents: the Ste. Justine Hospital Centre and Montreal Children's Hospital. These will not be described since our research does not deal with children. We will also describe the victim aid services: the Metro CLSC Centre for Victims of Sexual Assault and the Mouvement contre le viol (Anti-Rape Movement).

Just as we were concluding our inquiry in May, 1988, a new aid service for sexual assault victims was launched in East Montreal: Trève pour Elle ("She's had Enough"). Still in operation, this service was not included in our research field. At the same time, the Laval-based Centre de prévention et d'intervention pour victimes d'agressions sexuelles (C.P.I.V.A.S.: Prevention and Action Centre for Sexual Assault Victims) was forced to close its doors before we could contact those in charge.

To conclude, we will discuss the Montreal area Table de concertation sur les agressions sexuelles: Round Table on Sexual Assault.

2.2.1 Hôtel Dieu clinic for victims of sexual assault

The Hôtel Dieu clinic for victims of sexual assault was set up in 1977. This service is aimed at the adult francophone population of the Montreal Urban Community. It handles an average of 150 persons a year who have suffered a recent sexual assault, and sometimes victims who were previously assaulted as well. To date, only women have been treated. Clients are referred to the clinic by police, community groups and the network of social and health services. Some persons also come alone, or with relatives or friends.

The clinic's goal is to offer full medical, counselling and social services at the time when they are needed. This is a front-line effort available to clients 24 hours a day, seven days a week. There is also a 24-hour crisis phone line.

An emergency doctor provides on-the-spot care to the clientele, and two doctors, especially assigned to sexual assault cases, supply medical follow-up. In addition, there are three psychologists working in the service, with one always on duty and available on call. They provide clients with follow-up. In this hospital environment, treatment has three components.

2.2.1.1 First component

When she gets to the hospital, the victim is sent by staff to a special room for sexual assault cases. The nurse checks the patient's vital signs and administers first aid if needed. In the meantime, the message service has contacted the worker (a therapist) who comes immediately, to emergency on evenings, nights and weekends and, in daytime, to the medical centre.

On arrival, the worker at once introduces herself to the victim and explains her role and her objectives. Broadly speaking, she encourages the assault victim to describe the event and express her feelings about what has happened. The therapist warns the victim about the various possible reactions she might have, informs her about the medical/legal examinations and explains their purpose. To avoid having the client repeat her story, the worker informs the doctor about the nature of the assault and assists him/her in the examinations.

The worker also sees that an IVAC compensation claim is filled out.[2] Additionally, the therapist makes sure that the sexually assaulted person can be in a safe place when she leaves hospital. She gives the victim her medical instructions and appointments as well as a telephone number where the person can contact her at all hours.

2.2.1.2 Second component

This is short-term medical and counselling follow-up that includes weekly meetings with the client. This consists of helping the victim regain control of herself and organize her day-to-day life. In addition, the victim is provided with someone to accompany her to court, if she wishes.

2.2.1.3 Third component

This is long-term follow-up aimed at victims displaying persistent feelings of fear and distress.

Our description of treatment at Hôtel Dieu is very succinct. This clinic also offers such other services as: information, talks, training courses, research and statistical data, medical/legal referrals and reports. There is also a documentation centre.

2.2.2 Montreal General Hospital

The medical clinic at Montreal General Hospital, set up in 1977, is aimed at the adult anglophone population. It treats about 50 recently assaulted clients every year. Police and the community health network refer clients to this centre.

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[2] IVAC: Indemnisation des victimes d'actes criminels (Crime Victims Compensation). This is a program set up by the Quebec government under the Crime Victims Compensation Act, R.S.Q. Chap. I-6.

Patients have access to the clinic's services on weeknights from 10 p.m. to 8:30 a.m. and during weekends on a 24-hour basis. The Montreal General Hospital clinic works closely with the Metro CLSC aid Centre for Victims of Sexual Assault. Clients who are assaulted during the evening or night will receive medical attention at the Montreal General Hospital's clinic and then be referred to the Metro CLSC for follow-up. When the assault occurs in daytime, the anglophone victim will be taken to the Metro CLSC, which has a medical examination team.

Initial treatment and medical follow-up through this medical clinic are delivered by a family doctor who is on call.

The clinic also offers other services: information, training courses, research and statistics, medical/legal referrals and reports.

2.2.3 Metro CLSC Centre for Victims of Sexual Assault

The Metro CLSC Centre for Victims of Sexual Assault has been treating francophone and anglophone women since opening in 1980. Approximately 400 victims receive the centre's services every year. Lately, Metro CLSC's policy has changed. Whereas formerly only female victims were accepted, the centre is now accessible to victimized males as well. It deals with clients who have been assaulted recently, previously or incestuously in the past and, sometimes, with mothers of sexually abused children as well as battered women. Patients are referred to the Metro CLSC by the social and health services network, the community and the police. On occasion, victims coming for treatment have heard of this service through the centre's newsletter or through relatives or friends.

Services are provided to victims from Monday to Friday from 8:30 a.m. to 10 p.m. In addition, there is a crisis phone line continuously available to victims. After the centre's closing time, the crisis line is manned by volunteers.

Emergency medical care and follow-up are provided to victims by the aid centre's doctor, available on the spot. Counselling follow-up is provided by a full-time worker and another on half-time, together with four students.

Counselling can be given individually or in a group. The centre provides other services: prevention, information on request, talks, courses, research and referrals. It also has a documentation centre and a medical/legal service.

This body is supported financially by the Department of Health and Social Services and the Department of Employment and Immigration.

To sum up, the Metro CLSC aid centre's role is to provide quality services, bilingual and free of charge, to sexual assault victims and "survivors" of incest.

2.2.4 Mouvement contre le viol/Anti-Rape Movement

This aid centre for sexual assault victims was established in 1980 for francophone and anglophone women. The Anti-Rape Movement's workers deal with some 500 victims a year, either in person or by telephone. Client services are provided by three counsellors. The volunteers do not deal with patients, but help instead with the centre's administration.

The centre deals with victims of recent or previous assault, persons who have experienced incest in childhood, mothers of abused children and women who have been violently attacked.

Women are referred to this organization by community groups and the social and health services network. Women who have noticed the centre's advertising may also come for treatment.

The Anti-Rape Movement is accessible to victims Monday to Friday from 9 a.m. to 5 p.m., plus two evenings a week. A crisis phone line is open from 9:30 to 4:30 during the week.

In this aid centre, no medical care is provided to clients. Victims' crisis situations and psychosocial follow-up are dealt with by three full-time workers; women are attended by the same therapist from beginning to end.

The Anti-Rape Movement also gives information sessions in schools, CEGEPS (community colleges), universities and community centres. A documentation mini-centre is provided for victims, people doing research, parents wanting information and anyone else who is interested in the topic of sexual assault. An incest "survivors" group has also been formed recently. There is a trainee service and talks are given on occasion. Prevention, research and referral services are available as well.

This organization is supported financially by the Department of Health and Social Services and the Department of Employment and Immigration. Fundraising campaigns are also used.

The Anti-Rape Movement is a service specifically for victims of sexual violence.

2.2.5 The Round Table on Sexual Assault

The Round Table on Services to Sexual Assault Victims was launched in April, 1980 by Montreal General Hospital. It was intended to bring together people concerned about the fate of victims of sexual assault. At the outset, its objectives were to facilitate discussion among members and stimulate the development of new victim services. As these objectives had been largely met, it was decided to revise them in 1983.

To improve services for sexual assault victims, new objectives were put forward: information sharing, encouragement for the creation of new resources, evaluating existing programs and sharing expertise.

Given that the round table's concerns were still to improve treatment for sexual assault victims, share knowledge and mobilize resources, as well as achieve greater cohesiveness in the group and better visibility for the round table initiative, the group's mandate was redefined in April, 1988.

At present, there are twenty members representing various institutions.

2.3 Conclusion

The aforementioned indicate the framework and context of our study. We note that present policies for the judicial handling of sexual assault followed the passage of Bill C-127 or coincided with these legislative measures. However, victim aid services including the round table, had seen the light of day well before Bill C-127.

3.0 THE STUDY'S PROBLEM AREA AND METHODOLOGICAL APPROACH

Our inquiry's definition of the problem area it addresses, as well as its investigative approaches, were worked out in line with the "terms of reference" established by the Department of Justice Canada. Our review of the literature and a prior study (Gravel, 1985) enabled us to be more specific and marshal our defined objectives and strategies.[1]

3.1 Problem area

The objective of our study was to "acquire the fullest possible database for assessing the impact of the provisions in Bill C-127 with respect to sexual assault."[2]

Considering the fact that the impacts of new legislation may be multifaceted and diverse whether or not that is desired, expensive or inexpensive, general or specific, varying from one judicial district to another, we pinpointed a few more special areas for investigation while attempting to address, as best we could, the questions raised in our terms of reference.

The study encompassed two dimensions, one descriptive and the other evaluative.

3.1.1 The descriptive study

Its objectives were:

- to describe the processing of complaints and the reasons underlying various ways of processing complaints;
- to identify victims' needs and problems with respect to the justice system;

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[1] Unfortunately, the Stanley report (1985) sponsored by the Department of Justice reached us at the conclusion of our inquiry.

[2] Terms of Reference - Department of Justice Canada contract.

- to detail the remedies and services available to victims (including groups, round tables, Quebec policies);

- to identify the reasoning behind current decision-making, when a "before/after" comparison cannot be made,;

- to provide a setting for the evaluative study.

This is a highly factual study, not based on any specific theory or assumption, but describing the current reality in terms of the consequences of sexual assault and its handling within the court and psycho-social services. It focuses mainly on areas where no "before/after" comparison can be drawn with sufficient stringency, or else is irrelevant.

For example, the current processing of a complaint can be described beginning with the laying of a complaint, according to whether the victim is an adult or a minor and according to her credibility and that of the assailant. However, we will not necessarily be able to evaluate this process in 1986, comparing it with 1981, since most decisions are left to the good judgment of decision-makers who rarely record their reasoning.

Is the way in which different groups concerned with this issue work together in the Province of Quebec and Montreal the product of legislative change? Realizing that our study could not answer this question, we opted for the descriptive approach. We have already noted that the emergence and survival of counselling and social services for victims seem to have been largely unaffected by the 1983 legislation. But it was important, nonetheless, to know how the state of affairs in this area of concern.

To sum up, when it is impossible to know the previous situation, we must limit ourselves to describing the current reality and providing a subjective appraisal of the individuals involved in the process.

The descriptive aspect of the study is principally based on the following: reviewing the literature; interviewing decision makers and victims; analyzing stated policies; and observing courtroom activities.

3.1.2 The evaluative study

This was the main component of our research and had as its objectives:

- to investigate the nature of the changes brought about by Bill C-127;
- to gauge the extent of these changes, as far as possible;
- to pinpoint the thrust of these changes;
- to identify their sources and targets; and
- to see what shortcomings remain.

To assess what impact the changes have had, we identified four main areas for "before/after" investigation:

1) practices in the various segments of the justice system and in aid centres;
2) the attitudes of the various parties involved, the victims and the press;
3) victims' behaviour (information, cooperation, etc.); and
4) the match of resources to needs.

Ideally, an evaluative study should be under way even before the actual agent of change is felt, so that the prior situation can be properly understood. In this case, the law that could have stimulated change was passed three years before evaluation began. Consequently, our study was carried out *a posteriori* and its control of the "before" factor is less than perfect.

Our frame of reference is given in the analysis of the legislation in Chapter I: the changes brought about by Bill C-127 in terms of the nature of the offences; and the parties to the offence and the hearing process. As well, this frame of reference was expanded to encompass the principles and considerations that influenced legislators.

Bill C-127 was based on three principles that were recognized by the Law Reform Commission in 1978: the protection of the integrity of the person; the protection of children and other vulnerable persons; and the upholding of public order. A fourth principle was added: the elimination of sexual discrimination.

Also, during the ten years preceding passage of this law, numerous groups made Parliament aware of the reasons why they supported or opposed the proposed draft amendments. From all these opinions, it may be most important to remember, among the anxieties expressed: cheapening the sexual dimension of the violence wreaked and eroding the concept of rape. In terms of hopes, there was approval of the intent to abolish discrimination between the sexes where assaults against the person were concerned and to put the emphasis on the assault-related aspects of the crime rather than the sexual ones.

Our evaluation process was driven by the legislator's guiding principles, as well as individual and group reactions to the various bills. Both, however, were stated as value judgments and required a transposition compatible with our research. The transfer was very simply accomplished on the basis of eight assumptions used to develop our initial research tools.

a) Victims of sexual assault have greater access to justice:

Increase in the rate of complaints brought:
- overall;
- in terms of types of assault;
- in terms of victim characteristics (e.g., men, women victimized by their spouses).

Higher percentage of charges coming to court:
- practices by police, the prosecution and victim aid centres.

b) Guilty pleas have increased when cases involve:

- minors as victims (specialized crown attorneys);
- assaults without witnesses;
- assaults causing bodily harm.

c) Conviction rates have fallen:

- lack of medical evidence;
- reduced screening by police; and
- potentially heavier sentences.

d) Sentences are lighter:

- assailant and victim acquainted;
- lack of evidence of nonconsent; and
- lack of testimony by the victim.

e) Victim aid services are becoming rarer:

- more humane treatment by the police and courts; and
- grants reduced.

f) The press is drawn only to spectacular cases that are often hard to get at or where freedom to publish is restricted.

g) Violence of a sexual nature is an offence against the person on the same basis as any other assault:

- "rape" concept cheapened;
- evidence is identical to that brought for other types of violence.

h) Victims of sexual offences now have the impression that they are obtaining justice in the courts.

These assumptions were laid before the Department of Justice Canada in our initial proposal. There was never any question of testing them in the strict sense, but rather using them as guidelines in developing our research tools.

Finally, we also wanted to know to what extent and with what results provincial and local policies for dealing with sexual assault were being applied.

3.2 Methodological approach

To a very great extent, our research techniques were laid down for us in the "terms of reference" developed by the Department of Justice Canada. We provide a general overview of these here, with a detailed description to follow in each part of this report.

3.2.1 Research advisory committee

The department set up an advisory committee on research to assist and guide researchers and made up of local representatives of the organizations involved. This committee "provides the necessary expertise to facilitate the research process and gives researchers the information they need. The committee looks at the research tools and makes sure that they correspond satisfactorily to local objectives."[3]

The advisory committee was not actually set up in Montreal, where a liaison committee already existed that included the judiciary, crown attorneys, police, probation and court services. The Montreal liaison committee was perfectly capable of guiding and assisting the research team. On June 4, 1987, the liaison committee looked at the project with the researchers, Department of Justice Canada representatives and two Quebec specialists in working with sexual assault victims in attendance. The committee gave its opinion and offered cooperation and support. All later consultation was done individually and not in committee.

3.2.2 Research universe

The project was carried out in the Judicial District of Montreal, encompassing the Montreal Urban Community and the City of Laval -- an area in which almost half of all Quebecers served by the justice system (approximately three million) live.

Sexual assaults addressed by the study were the ones that had been subject to legislative change (Table 1).

Where the "before/after" comparison is appropriate, it always involves the periods 1981-82 and 1984-85.

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[3] Minutes of a meeting of the liaison committee of the Montreal Court of Sessions of the Peace, June 4, 1987.

3.2.3 Research techniques

In the description of our results, a clear distinction will be made between quantitative data and qualitative data. These two streams were not hermetically sealed. Far from it, they enriched one another.

The quantitative study dealt with cases. Factual data were gathered in the archives of the police, the Montreal Court House and an aid centre. This study is closest to the evaluative component.

As for the qualitative study, it mainly addressed the descriptive aspect of our research. It was carried out using interviews and observations that are presented in the third part of our report.

We had agreed to collect press clippings relevant to the study. This activity was cut short after a few months because it was largely pointless, and all copies of articles were forwarded to the Department of Justice Canada.

3.3 Conclusion

This is an *a posteriori* evaluative study with limitations to be identified, as we describe our results. The general context of our research, as well as techniques employed, were essentially laid down by the Department of Justice Canada and, of course, the nature of the changes brought in by Bill C-127.

PART TWO

ANALYSIS OF QUANTITATIVE DATA

A quantitative approach was selected for the collection and processing of data from the files of three components of the legal and para legal systems, namely: the Montreal Urban Community Police Department (MUCPD), the courts (Superior Court of criminal jurisdiction and Court of Sessions of the Peace - Judicial District of Montreal) and the Montreal Centre for Victims of Sexual Assault.[1]

For each of these information sources, a systematic sampling process was set up and used. Relevant data were entered on a precoded grid and then analyzed using the regular quantitative techniques.

These different operations enabled us to satisfy the evaluative aspect of the study, since our investigations dealt with cases that were opened before and after Bill C-127 came into force. This comparative research component will, of course, be completed by analysis of the qualitative variables that form the subject of Part Three of this report.

The quest for quantitative information lasted about eight months. The sexual offences chosen for our study are those affected by the 1983 legislative amendments. Chapter I has already provided details about the amendments made to the Criminal Code in this reform.

Note that we have also chosen to include in our study the offences under sections 146(1) and (2) of the Criminal Code, which involve victims who are minors. Given that the lawmakers have made the victim's consent irrelevant here, it is not impossible for rape cases to have been prosecuted under these provisions.[2] Moreover, our results show that, in fact, a significant proportion of victims of rape, attempted rape, indecent assault and sexual assault are also under age 18. We feel that the problem surrounding the commission of a crime differs according to whether the victim is a minor or an adult. It is not our purpose here to discuss the specific implications of such an offence for children and adolescents. The subject's complexity would require a study on its own. For basically methodological reasons, however, we will not eliminate the files on victimized minors from our sample. A complete purge was impossible and might even have skewed our conclusions, particularly as information on the victim's age is unavailable in some cases.

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[1] Throughout this study, we will be referring to the Court of Sessions of the Peace despite the fact that in September, 1988, after a reorganization of the Quebec courts, it became the Quebec Court's Criminal Division.

[2] R. vs Kienapple [1975] S.C.R., 729.

We will begin our quantitative analysis by looking at the police files and then continue with the aid centre and court data. We will develop these sections by describing the methodological approach used and the variables thus obtained.

4.0 THE POLICE FILES

In criminal matters, the judicial process is generally initiated by a complaint made by a citizen to the police. The receipt of this complaint results in action by a patrol team which conducts a summary investigation of the alleged crime. At this stage, peace officers are assessing the prima facie merits of the complaint. If it is appropriate to continue, the case is then referred to an investigator for more thorough attention.[1]

In cases where the investigation leads to identification of a suspect and a charge by the crown attorney, an "application to bring proceedings" is prepared. Approval of this application's content by the competent police authorities results in an information being drawn up. However, this information needs a crown attorney's endorsement before being laid. We should point out here that the police enjoy some discretion in this respect.

The steps taken and results achieved in the investigation process are noted in event reports and investigation reports. Various other documents may round out the files, in particular: statements by victims, suspects and witnesses; photos (of injuries, participants in an identity lineup, etc.); laboratory results; an "application to bring proceedings," etc. The Montreal Urban Community Police Department files are thus an important source of information with respect to characteristics of victims and suspects, the circumstances surrounding offences and the processing of complaints (investigative systems, reasons for decisions, etc.).

In the pages that follow, our main goal will be to shed light on Bill C-127's influence on the behaviour of sexual assault victims and police practices.

4.1 Methodological Approach

The methodological process can be divided into two main stages. We present these chronologically.

4.1.1 Sampling

Like data collection, the process of sampling from the Montreal Urban Community Police Department files called for steady cooperation from the police authorities, whose good will in this respect was unfailing.

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[1] Note that under section 128 of the Criminal Code, persons laying a wilfully false charge can be charged with public mischief at any time.

Initially, the police pulled all complaints involving sex from their files for the years 1981, 1982, 1984 and 1985. Because of the way offences were classified, it was impossible to get an exclusive list of the particular offences addressed by the evaluative study. All files appearing in this overall list were taken from the vaults, year by year, district by district, and routed to headquarters.[2] We obtained 4,603 cases in this way.

The researchers then went through all the cases to decide which ones were relevant to our study. For example, charges of incest, sodomy and gross indecency had to be eliminated. This examination enabled us to define the size of the population and establish sampling criteria. Of the 4,603 cases, some 3,144 proved to be relevant. Table 2 reports how charges were distributed (in real numbers and percentages) per year for each type of sexual crime.

As previously agreed with our client, the Department of Justice Canada, we planned to use all the relatively rare complaints - for example, rape, sexual assaults with a weapon and aggravated sexual assaults - while randomly selecting one out of every two cases for the more common sexual offences in order to get a total sample of about 600 cases. Having analyzed the files from 13 of the 24 districts of the Montreal Urban Community for 1981, we realized that this procedure was pointlessly cumbersome and costly. Data collection from the year 1981 was cut short and a new approach adopted. For the year 1982, we decided to use only one out of every two cases of rape and unlawful sexual intercourse and one out of every six cases of the other assaults. With our experience of the years 1981 and 1982, we felt that our sampling for 1984 and 1985 was adequate. For each of these two years, we used all aggravated sexual assaults and every case of unlawful sexual intercourse, one-third of sexual assaults with a weapon and one in ten of common sexual assaults. In this way, we obtained enough of the infrequent kinds of assaults while maintaining a good quantity of the more common charges, which are still quite diversified.

Finally, 740 cases, representing a quarter of the population, were used for data collection. There was oversampling for the years 1981 and 1982 (243 and 209 charges respectively, as compared with 149 in 1984 and 135 in 1985), but this was corrected in data processing by differential weighting when needed.

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[2] To see the geographical area under Montreal Urban Community Police Department jurisdiction and the boundaries of its twenty-four (24) districts, readers can turn to Appendix E of this report.

Table 2 **Complaints to MUCPD concerning sexual offences, 1981 - 1982 and 1984 - 1985: Population**

Years >>	BEFORE 1983						AFTER 1983						GRAND TOTAL	
	1981		1982		Total		1984		1985		Total			
Types	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault (female)	393	53.5	300	53.1	773	53.3							773	24.6
Indecent assault (male)	77	10.5	86	12.0	163	11.2							163	5.2
Attempted rape	46	6.3	35	4.9	81	5.6							81	2.6
Rape	209	28.5	208	29.1	417	28.8							417	13.3
Unlawful sexual intercourse: 146(1)*	5	0.7	5	0.7	10	0.7	6	0.8	6	0.7	12	0.7	22	0.7
Unlawful sexual intercourse: 146(2)**	4	0.5	2	0.3	6	0.4	3	0.4	4	0.4	7	0.4	13	0.4
Sexual assault (simpliciter)							639	80.9	782	86.5	1421	83.9	1421	45.2
Sexual assault with weapon							111	14.1	104	11.5	215	12.7	215	6.8
Aggravated sexual assault							31	3.9	8	0.9	39	2.3	39	1.2
TOTAL	734	100.0	716	100.1	1450	100.0	790	100.1	904	100.0	1694	100.0	3144	100.0

* involving a female under 14 years

** involving a female from 14 to 16 years and of previously chaste character

Table 3 itemizes our sample, indicating the number of cases analyzed for each year and each type of charge. In determining the nature of offences, we adhered to the police classifications, even if, at times, after reading the facts involved, we felt that another nomenclature would have been more appropriate (our analysis will bring out, for example, that some ordinary sexual assaults could have been described as "aggravated" or "with a weapon"). On the other hand, in cases where the police breakdown was ambiguous, the characteristics of the offence were considered so we could determine a classification.

As previously mentioned, the sampling approach overrepresented the uncommon complaints and underrepresented more frequent offences. This is shown in Table 4. The most striking variations occur under "Rape" and "Sexual assault."

Table 3 MUCPD charges re sexual offences, 1981 - 1982 and 1984 - 1985: Sample

Years > >	BEFORE 1983						AFTER 1983						GRAND TOTAL	
	1981		1982		Total		1984		1985		Total			
Types	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault (female)	96	39.5	74	35.4	170	37.6							171	23.1
Indecent assault (male)	13	5.3	19	9.1	32	7.1							32	4.4
Attempted rape	24	9.9	6	2.9	30	6.6							30	4.1
Rape	105	43.2	107	51.2	212	46.9							214	28.8
Unlawful sexual intercourse: 146(1)*	4	1.6	2	1.0	6	1.3	6	4.0	5	3.7	11	3.9	17	2.3
Unlawful sexual intercourse: 146(2)**	1	0.4	1	0.5	2	0.7	3	2.0	4	3.0	7	2.5	9	1.2
Sexual assault (simpliciter)							72	48.3	85	63.0	157	55.3	157	21.3
Sexual assault with weapon							39	26.2	32	23.7	71	25.0	71	9.7
Aggravated sexual assault							29	19.5	9	6.7	38	13.4	38	5.2
TOTAL	243	99.9	209	100.1	452	100.2	149	100.0	135	100.1	284	100.1	739***	100.1

* involving a female under 14 years

** involving a female from 14 to 16 years and of previously chaste character

*** We do not know the year of reporting in one case.

Table 4 Variation between Population and Sample (UCPD 1981 - 1985)

Charge	Total MUCPD (%)	Total Sample (%)	Deviation Sample/MUCPD
Indecent assault (female)	24.6	23.1	- 1.5
Indecent assault (male)	5.2	4.4	- 0.8
Attempted rape	2.6	4.1	+ 1.5
Rape	13.3	28.8	+ 15.5
Unlawful sexual intercourse	1.1	3.5	+ 2.4
Sexual assault	45.2	21.3	-23.9
Sexual assault with a weapon	6.8	9.7	+ 2.9
Aggravated sexual assault	1.2	5.2	+ 4.0
TOTAL	100.0	100.0	

4.1.2 Data collection

We did our sorting over a two month period at Montreal Urban Community Police Department headquarters. The operation required twice the time expected; this is accounted for by the numerous manipulations needed to obtain a scientifically valid sample and the number of cases used for analysis -- many more than anticipated.[3] Though the work turned out to be extremely tedious, at least it posed no major problems.

The variables obtained were recorded on a coded grid. The general organization of this questionnaire is similar to the coding grid in Mrs. Sylvie Gravel's Master's thesis.[4] This document, which deals with the court processing of offences of a sexual nature in Montreal, was extremely valuable to us throughout the project, whether as a reference or even a data source. We will return to it farther on.

Before finalizing our working tool, we were careful to check the police occurrence and investigation reports to make sure that the information we wanted was potentially available.

The questionnaire is 12 pages long and contains 52 questions. It touches on four main areas:

1) Offence: the legal term for the assault; the characteristics of the offence and the circumstances in which it was committed; notification of police.

2) Victim: the victim's sociodemographic characteristics; her connections with the suspect; her alcohol and drug consumption; the medical exam.

3) Suspect: the suspect's sociodemographic characteristics; his alcohol and drug consumption; criminal record.

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[3] We had greatly underestimated the overall number of sexual offence complaints to the Montreal Urban Community Police Department and, as a result, we were anticipating a sample of about 550 cases. As mentioned above, we finally had to analyze 740 cases.

[4] Sylvie Gravel, Le traitement judiciaire des délits d'agression sexuelle dans le district de Montréal ("The Judicial Treatment of Sexual Assault Offences in the Montreal Area"), Master's thesis, Montreal, Faculté des études supérieures, University of Montreal, 1985, 241 p.

4) Investigation: timelines; techniques employed; the conclusion of the process; type of police involvement with the victim.

Two appendices also expand the grid content. These were applicable in cases where more than one victim or suspect was involved. In this connection, specific data collection policies had to be established for cases with multiple victims, suspects or offences. We should briefly outline these.

When a number of assaults (leading to different charges) had been committed against one person, only the most serious of these offences was considered. Thus, rape took precedence over an indecent assault. In cases, however, where more than one victim was involved in an occurrence and the acts committed against each of these victims were separate criminal acts, we did not set aside any of the charges and we filled out the same number of questionnaires as there had been victims. In this way, we were adjusting to the court process, where such situations may produce as many different indictments.

When several victims' names were cited in one report and the assaults involved were all similar in nature, only the information on the first two victims was entered.[5] There are obvious reasons of effectiveness that favour this approach. Also, our results are in no way skewed by it. In fact, pretesting enabled us to see that the majority of these cases have to do with victimized minors and the data that interest us do not vary appreciably from one person to another.

The same principle was used for cases of multiple assailants. Our data collection was limited to the characteristics of only two suspects.[6] Here again, our choice was made out of concern for effectiveness.

We will end this section by mentioning that throughout the process of collecting variables, we kept and updated an interpretation guide in which we indicated changes made to the questionnaire and the details required. This guide is basic to a proper understanding of the coding grid.

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[5] Here, we followed the order of victims in the police file.

[6] These were also the two top suspects according to the order they were given in the police report.

4.1.3 Data analysis

When it came to police files as well as the victim aid centre and Court records, our analytical approach was fairly traditional and rudimentary.

After the usual checking involved in collection and coding, we refined, organized and, in some cases, regrouped our data.

The SPSS program was used for processing. The files are basically processed descriptively. At times, we explored correlations. Since the police files sample was fairly special, as we have seen, weighting and inferential statistical measures had to be used. Remember that the year 1981 poses insurmountable weighting problems since only 13 of the 24 police districts were covered by the collection exercise.

4.2 Data collected

This section relates the results obtained on the basis of questionnaires aimed at the police files. It will describe, in order, the nature and circumstances of the offence, the characteristics of the the parties involved in the incident, the complaint, its aftermath and, finally, the outcome of the process.

4.2.1 The offence

The Montreal Urban Community Police Department files provide a certain amount of information on the nature of the offence, its legal classification and the surrounding circumstances.

4.2.1.1 Types of offence and relative frequency

We will look first at quantities and distribution by type of offence for all the offences reported to police during the four years under study.

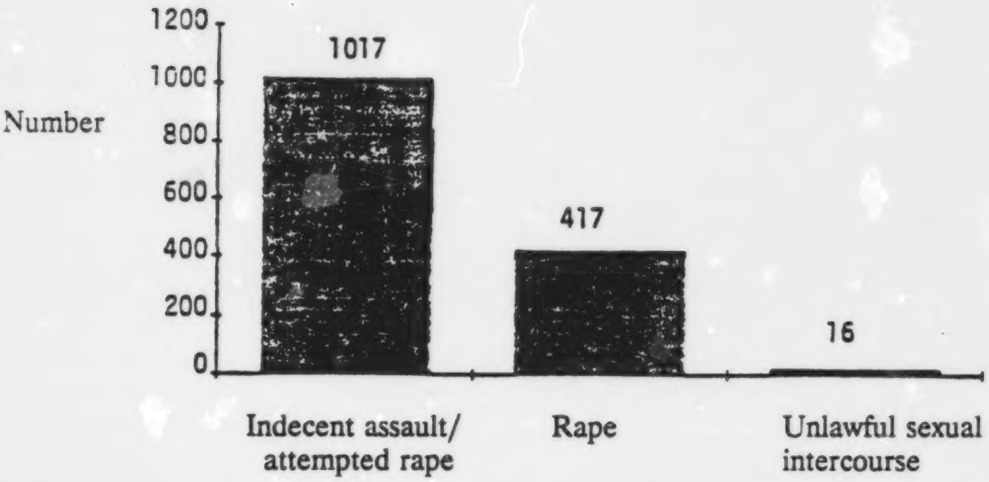
Here, we have to go back to Table 2. In the first place, we can see that the reported total went from 1,450 in 1981 - 1982 to 1,694 in 1984 - 1985.

If we take the year 1981 as our base point, we observe a 23 per cent rise in 1985, which is fairly noteworthy but not spectacular in view of the general increase in violent crime. What gives greater pause is the nearly 15 per cent leap from 1984 to 1985. In 1987, the figure climbs to 1,231.[7]

	N	Variance
1981	743	--
1982	716	- 2.7 %
1983	790	+ 6.8 %
1984	904	+23.0 %

In all, the statistics show a steady increase that is higher than for other crimes against the person.[8] We may, therefore, venture an assumption that sexual assaults are reported to the police more often, although the possibility of a real increase in these assaults cannot be dismissed. We could not use this fact to infer that Bill C-127 has influenced the volume of complaints.

Figure 1 Sexual Assaults Pre 1983



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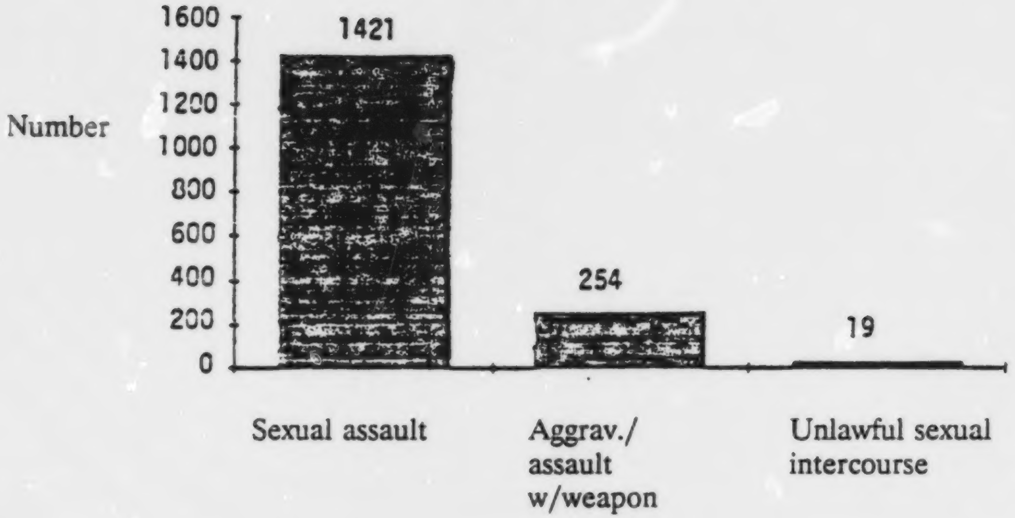
[7] Criminality statistics, MUCPD, 1988. This figure includes only those offences addressed by our study. It was not available for the year 1986.

[8] Ibid.

Figure 2 Sexual Assaults Post 1983



What type of assault is involved here? Prior to the 1983 reform, 65 per cent of assaults were recorded by police as indecent assaults (53 per cent against females and 12 per cent against males). Rape accounted for 29 per cent of cases and attempts to commit rape, six per cent. In 1984 and 1985, some 84 per cent of sexual assaults were not qualified ("simpliciter"). There may be some basis for the concern voiced by certain groups that impact of the crime of rape is being trivialized. We will return to this point. It should be noted that 92 per cent of sexual assaults were simpliciter.[9]

Not only is unlawful sexual intercourse (CrC s 146(1) and (2)) a rarely reported or rarely committed offence, but also its rate of occurrence remained exactly the same over the years under study. This may also be explained by the fact that this very behaviour constitutes sexual assault, as the victim under 14 years of age is considered nonconsenting, unless her partner is no more than three years her senior.

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[9] Criminality Statistics, MUCPD, 1988.

Up to now, we have been dealing with overall statistics. Let us now look at what emerges from a more in-depth study of a sampling of cases.

4.2.1.2 Acts perpetrated on the victim

Especially after 1983, legal classifications tell us little about the specific nature of the acts allegedly committed. To find out more, we took the descriptions from the police files and sorted them on the basis of the act that seemed most serious. The fact is that victims are quite frequently forced to perform more than one variety of intercourse. After this, we weighted our data to compensate for oversampling in some legal categories. Remember that, for the year 1981, our study was completed for only 13 of the 24 Montreal police districts.

Figure 3 Number of Sexual Assaults Pre and Post 1983 by Police Classification

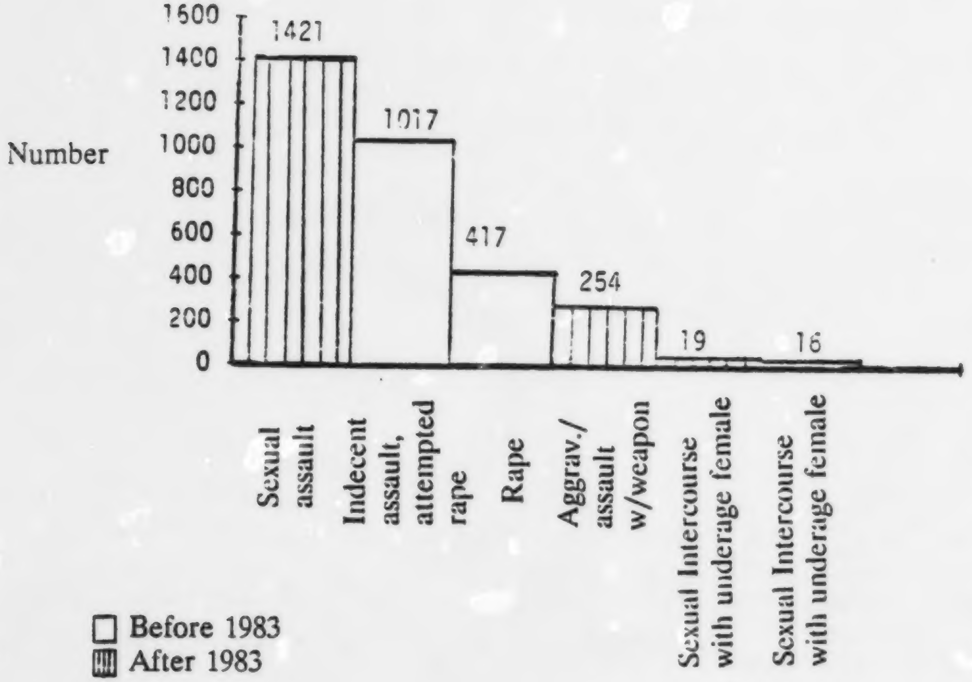

Table 5 Acts Perpetrated on Victims*

	BEFORE 1983						AFTER 1983						GRAND TOTAL	
	1981		1982		Total		1984		1985		Total			
Acts	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Rape**	92	24.3	160	19.7	252	21.1	172	19.9	187	20.5	359	20.2	611	20.6
Repeated rape***	15	3.9	44	5.4	59	4.9	86	9.9	48	5.3	134	7.6	193	6.5
Attempted rape	29	7.7	18	2.2	47	3.9	80	9.3	48	5.3	128	7.2	175	5.9
Touching	160	42.3	336	41.4	496	41.7	317	36.7	445	48.8	762	42.9	1258	42.4
Fellatio/ cunnilingus	13	3.4	74	9.1	87	7.3	102	11.8	91	9.9	193	10.9	280	9.4
Sodomy and attempt	7	1.9	8	0.9	15	1.3	17	1.9	11	1.2	28	1.6	43	1.5
Other	58	15.3	172	21.2	230	19.3	90	10.4	82	8.9	172	9.7	402	13.6
Don't know	4	1.1	0	0	4	0.3	0	0.2	0	0	0	0	4	0.1
TOTAL	378	100.0	812	100.0	1190	100.0	864	100.0	912	100.0	1776	100.0	2966	100.0

* Frequencies adjusted to compensate for disproportion in sample. The year 1981 thus corresponds to only 13 police districts out of 24.

** Penetration by the penis or various objects

*** Repeated penetration by one or more assailants.

We can clearly see in Table 5 that victims are assaulted in many ways. In over one-quarter of cases for both periods studied, there was penetration of the vagina by the penis or some kind of object. The commonest act is contact or touching (more than 40 per cent of assaults). Touching ranges from unauthorized caresses to torture. It is hard to establish a scale of seriousness here. The "other" category in Table 4 covers a wide variety of abuses: forcing the victim to undress; masturbating in front of her; making her eat excrement; etc. This category does not indicate that acts are less serious, rather it reflects the diversity of abusive acts.

Up to 1983, the legal classification used by police corresponded fairly closely to the acts supposedly committed.[10] After 1983, we note a certain lack of focus, a problem with defining sexual assault, as such, relative to the former categories. Thus, some 17 per cent of cases involving penetration were put down as common sexual assault because the assailant was unarmed or did not cause the victim serious bodily harm. We can see, however, that the nature of the abuses remains unchanged through time. Only the names have been changed.

4.2.1.3 Coercive means employed

Table 6 completes the section above. It shows us that 21 per cent of the sexual assaults in our sample were committed with weapons (N=150). Before Bill C-127 came into effect, this percentage was 17, climbing to 28 after 1983. Accordingly, we looked for the source of this discrepancy. Our sampling method seems to be the cause. For the years 1984 and 1985, assaults with a weapon were overrepresented. With the data weighted for this period, we find that some ten per cent of assaults were actually committed with weapons. Note, however, that only seven per cent of all police files for these two years are labelled "Assaults with a weapon," even though police reports state that weapons were present. Mention in a police report that a weapon was present does not necessarily mean that it will be labelled as an "assault with a weapon."

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[10] Some sexual assaults were grouped under other headings, such as: mischief, breaking and entering, theft, breach of probation, etc. Our investigation did not extend to these cases.

Table 6 Coercive Means Employed

Means	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
None	98	22.8	47	17.2	146	20.8
Verbal threats	23	5.4	9	3.3	32	4.6
Phys. violence	231	53.8	138	50.5	369	52.5
Firearm	14	3.3	8	2.9	22	3.1
Other weapon	60	14.0	68	24.9	128	18.2
Other	3	0.7	3	1.1	6	0.9
TOTAL	429	100.0	273	100.0	703*	100.0

* Missing data: 37 cases.

Budgetary and time limitations ruled out any detailed analysis of the relationships between coercive means employed, acts committed and the police classification of the offence. This analysis might make a study in itself. We strongly urge such a study. It is worth noting, however, that physical violence appears as the most commonly used means of intimidation. Finally, in 20 per cent of the cases in our sample, the assailant seems to have achieved his ends with ease, either by simply exercising his authority - when, for example, the victim is very young -- or taking advantage of a victim's naivete or terror. Here again, more detailed analysis is called for to encompass the the ages of the parties involved in the incident, the facts in dispute, injuries suffered and the classifications used by police.

Remember, however, that the most commonly used coercive means is still physical violence: slapping, hitting, choking, binding, etc.

4.2.1.4 Injuries

According to the police files, 57 per cent of victims were physically and psychologically unharmed. We note with interest that this percentage went from 61 prior to 1983 to 51 later on. Given the results outlined in the preceding sections, we may well conclude that police are showing more sensitivity to the trauma experienced by victims. The most recent files give more consideration to the crime's effects on the victim, as shown by a decrease in missing information (Table 7).

It must be remembered that the police reports mention only those injuries visible in the very short term to the officers, who are neither doctors nor mental health specialists. Based on comments or observations in the files, the researchers tried to estimate or identify injuries. Our categorization is all the flimsier in that information is missing for 210 cases.

Table 7 reveals, nonetheless, that, at first glance, police reckon that 75 per cent of assaults have no serious after-effects for victims.

Table 7 Injuries to Victims

Means	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
None	196	60.9	106	51.0	302	56.9
Serious	21	6.5	12	5.8	33	6.2
Slight	64	19.9	54	26.0	118	22.3
Psychological	13	4.0	15	7.2	28	5.3
Multiple	24	7.5	17	8.2	41	7.7
Other	4	1.2	4	1.9	8	1.5
TOTAL	322*	100.0	200**	100.0	530***	100.0

* Missing data: 132
** Missing data: 77
*** Missing data: 210

4.2.1.5 Scene of the crime

More than 43 per cent of assaults apparently took place in the home of one of the the parties involved in the incident, which is slightly higher than results reported by other researchers who also worked from police files (Gravel, 1985). The Canadian Urban Victimization Survey (Solicitor General, 1985) found 32 per cent of sexual assaults occurring in the home, and 68 per cent outside or in public places.

It was believed that victims assaulted in their own or their assailant's home reported the offence to police less frequently, for fear of censure, than victims who were assaulted in public places. At this point in our study, the results do not support this assumption. Moreover, we will be seeing farther on that half the clients of the victim aid centre had been assaulted outside their homes. The results, then, do not vary all that much.

Finally, let us stress that there is no difference between the two periods studied. At first glance, Bill C-127 does not seem to have prompted victims assaulted in their homes to report the offence more frequently.

Table 8 Scene of the Crime

Place	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Victim's home	111	24.7	52	18.4	163	22.2
Assailant's home	72	16.0	56	19.8	128	17.5
Victim's and assailant's home	10	2.2	18	6.4	28	3.8
Vehicle	62	13.8	27	9.5	90	12.3
Bar/club/disco	1	0.2	1	0.4	2	0.3
Street	65	14.5	28	9.9	93	12.7
Other public place	99	22.0	75	26.5	174	23.7
Other private place	29	6.5	26	9.2	55	7.5
TOTAL	449	100.0	285	100.0	733*	100.0

* Missing data: 7

4.2.1.6 Some salient points

Most (70 per cent) of the assaults reported to police are not particularly serious, if we look objectively at the acts committed against the victim and described in the police summary. Weapons are used relatively seldom (ten per cent of cases), but physical violence occurs in about half the cases. According to the police files, however, three quarters of the victims sustained no injury or else slight physical damage. As a rule, police classifications correspond fairly closely to the descriptions in their reports. When there is a deviation, it is generally downwards. Some assaults with a weapon, for example, are reported as ordinary assaults.

We will be seeing farther on, in the words of the victims themselves, that indecent or ordinary assaults can be experienced as serious outrage on the physical and psychic integrity of victims. In an area as private as sexual abuse, the police officer's subjective reading of an incident has free rein (the victim's reluctance to give the true facts, her desire to look good at any cost, police prejudices, etc.). Even the quantitative data bring out the problem of clearly stating the nature and seriousness of the facts alleged at the police investigation stage.

As for the differences between the years prior to and following Bill C-127, we noted none at all as far as the nature of the assaults reported to the police were concerned, and very few in terms of the coercive methods used. Nevertheless, the police files take more note of injuries after 1983. At the same time, the offence classifications used by police make it seem, at first glance at least, that the seriousness of these acts is being downplayed.

4.2.2 Victim and suspect

This section outlines the information in Montreal Urban Community Police Department files concerning the parties to the offence. We begin with the information about the victims.

4.2.2.1 Victims

In 95 per cent of the cases (N=705), the offence had only one victim. The following descriptions relate to these cases and, for multiple victim situations, the one we have agreed to call the "primary" victim. The sample size is thus 740. At the end of this section, there will be some brief comment on the data collected on "second" victims.

Table 9 Number of Victims

Number of victims	N	%
1	705	95.3
2	28	3.8
3	5	0.7
5	2	0.3
TOTAL	740	100.0

Victim ages

The victims of sexual assault are young. It is a peculiarity of this type of offence. As shown by Table 10, nearly 40 per cent of them are under age 18. The data show that 254 (34 per cent) are under 16, with about ten of these being preschoolers. It is important to remember that cases involving victimized minors will be heard by the Youth Court, if the accused is a minor as well. Such situations coming to the attention of police will elude our later analysis of the judicial process, which is limited to the Court of Sessions of the Peace.

Of course, a person can be sexually assaulted at any age, as happened to a septuagenarian in our sample. After age 25, however, the probabilities drop off appreciably. Almost three quarters of the victims who went to the police were aged 25 or under. The mean age was 22 before 1983 and 21 for the years 1984 and 1985, a minimal and insignificant discrepancy. The mode is age 18 before 1983 and age 15 afterwards. Moreover, the unsorted data reveal a significant rise in the under-16 victim group.

Table 10 Victim Ages

Age	BEFORE 1983*		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Under 18	167	36.8	123	43.2	291	39.3
18 to 20	80	17.6	35	12.3	115	15.5
21 to 25	87	19.2	44	15.4	131	17.7
26 to 30	43	9.5	34	11.9	77	10.4
31 to 35	28	6.2	29	10.2	57	7.7
36 to 40	16	3.5	9	3.2	25	3.4
41 to 45	10	2.2	3	1.1	13	1.8
46 to 50	9	2.0	2	0.7	11	1.5
51 and over	14	3.1	6	2.1	20	2.7
TOTAL	454	100.0	285	100.0	740*	100.0

* The year is not known in one file.

On the other hand, still dealing with ages, we wanted to see whether the legal nomenclature of an offence would vary with the victim's age. For this purpose, we made certain groupings that are seen in Table 11.

Table 11 **Offence Classification by Age**

Offence	Under 16		17 - 20		21 - 25		26 - 35		36 & Over		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault	96	37.9	37	24.3	34	25.9	17	12.7	19	27.5	203	27.5
Rape	37	14.6	60	39.5	46	35.1	46	34.3	25	36.2	214	28.9
Unlawful sexual intercourse	26	10.3	--	--	--	--	--	--	--	--	26	3.5
Attempted rape	4	1.6	6	3.9	7	5.3	8	5.9	5	7.2	30	4.1
Sexual assault	72	28.5	28	18.4	19	14.5	31	23.1	7	10.1	157	21.2
Sexual assault with a weapon	11	4.3	15	9.9	19	14.5	21	15.7	5	7.2	71	9.6
Aggravated sexual assault	7	2.8	6	3.9	6	4.6	11	8.2	8	11.6	38	5.1
TOTAL	253*	100.0	152	100.0	131	100.0	134	100.0	69	100.0	739*	100.0

* Missing data: 1

We can see from this that the seriousness of the offence seems to increase with age. As they get older, victims appear to figure in more serious offences while, on the other hand, they seem less frequent targets of minor ones. As an example, sexual assaults with weapons and aggravated assaults describe an upward curve as victim ages go up, and indecent assaults seem to follow the reverse rule, appearing less and less often.

There are a number of reasons that may explain this. We could argue that mature persons, when sexually assaulted, would be tempted to report only the most serious occurrences to police, overlooking what seems less important to them such as, for example, indecent assault. We could also cite the fact that an adult victim would be more liable to defend herself, which might result in more serious consequences during the episode.

Would police be inclined to minimize assaults on young people? Table 12 does not support this theory. Using the nature of the acts as a dependent variable, we get a distribution similar to the one in Table 11, where the victim's age was crossed with the police classification. Let us point out that the "other" category collects fairly high percentages for the youngest and oldest victims. Disregarding the cases where the police summary prevented researchers from describing the incident, we came across these types of descriptions for the under-16s: "The suspect undressed her and took a bath with her"; "The assailant sat the girl on his knee and looked up her shorts"; "The suspect showed the child his penis." The following acts were alleged by older women: "The suspect urinated in the victim's mouth"; "The assailant grabbed the victim by the arm, threatening her with a knife and showing his penis at the same time"; "The assailant took the victim's sweater off but didn't have time to do any more, since ..."; "The suspect dragged the victim between two cars, threw her on the ground and tried to tear her blouse, but she (the victim) yelled so loudly that he ran away."

Table 12 Acts by Victim Ages

Offence	Under 16		17 - 20		21 - 25		26 - 35		36 & Over		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Rape (penetration)	53	21.2	60	39.7	41	32.3	61	46.6	35	50.7	250	34.3
Repeated Rape	21	8.4	17	11.3	20	15.7	6	4.6	3	4.3	67	9.2
Attempted Rape	9	3.6	8	5.3	8	6.3	11	8.4	1	1.4	37	5.1
Touching	101	40.4	44	29.1	30	23.6	30	22.9	13	18.8	218	29.9
Fellatio/ Cunnilingus	23	9.2	6	4.0	11	8.7	12	9.2	0	--	55	7.5
Sodomy and Attempt	6	2.4	3	2.0	1	0.8	3	2.3	0	--	15	2.1
Other	37	14.8	17	7.9	16	12.6	8	6.1	9	13.0	85	11.7
TOTAL	250	100.0	151	100.0	127	100.0	131	100.0	69	100.0	729*	100.0

* Missing data: 11

Table 13 Acts by Victim Ages (Before and After 1983)

	BEFORE 1983					AFTER 1983				
Offence	Under 16 %	17-20 %	21-25 %	26-35 %	36+ %	Under 16 %	17-20 %	21-25 %	26-35 %	36+ %
Rape (penetration)	20.1	45.6	38.8	52.1	49.0	22.9	27.1	19.0	39.3	55.0
Repeated Rape	27.8	56.3	49.4	59.2	51.0	32.4	39.6	45.2	40.9	65.0
Attempted Rape	7.6	10.7	10.6	7.0	2.0	9.5	12.5	26.2	1.6	10.0
Touching	4.2	2.9	4.7	5.6	2.0	2.9	10.4	9.5	11.5	--
Fellatio/ Cunnilingus	43.1	28.2	25.9	21.1	16.3	27.1	31.3	19.0	24.6	25.0
Sodomy and Attempt	1.4	1.0	--	1.4	4.1	3.8	4.2	2.4	3.3	--
Other	16.7	7.8	14.1	7.0	24.5	11.4	8.3	9.5	4.9	--

Does the post 1983 period reveal a different relationship between the acts committed and the victim's age? In the first place, Table 13 shows us that the clear correlation between age and seriousness of offence noted in preceding tables (accurate to .001) is not as obvious when we compare the two time periods. This relationship holds for the years 1981 and 1982, but gets confused afterwards. This might be due quite simply to the fact that police are more explicit in describing the offence. For example, if we put "rape" and "attempted rape" together, the relationship between age and seriousness of offence stands up, and is, nevertheless, more pronounced, through the second period.

Sex of victims

In spite of Bill C-127, which eliminated discrimination by sex, the number of male complainants did not go up. It is still well below ten per cent of the total. When we weight the data to compensate for sampling discrepancies, we see that the percentage has stayed relatively stable at around seven per cent. Table 14 indicates that women still account for over 90 per cent of victims reporting sexual assaults to police.

Table 14 Sex of Victims

	BEFORE 1983		AFTER 1983		TOTAL	
Sex	**N**	**%**	**N**	**%**	**N**	**%**
Female	414	91.4	266	93.3	680	92.2
Male	39	8.9	19	6.7	58	7.8
Total	453	100.0	285	100.0	738*	100.0

* Missing data: 2

The majority of male victims are minors and the others are young adults. The average age is lower than for women, 17.

Personal circumstances and occupation

Given their youth, victims are mainly unmarried and living with a family member. Nearly 45 per cent of them are students. No difference was noted after the 1983 legislation.

The assailant-victim relationship

Here is a topic that is a real headache for researchers. From its beginnings more than 40 years ago, victimology has drawn attention to the connection between the parties involved in a criminal act. Apart from victimization surveys, however, few approaches have been developed for quantifying this aspect. The police and court files, as we shall see, are unreliable sources for this type of information.

According to Table 15, 77 per cent of assaults are committed by persons who are unknown or vaguely known to the victim. This result runs counter to all published data of which we are aware. The Canadian Urban Victimization Survey (Solicitor General, 1985) reports 45 per cent of sexual assaults as being committed by strangers. Most writers give an even lower percentage. How are we to explain this discrepancy? We suggest three complementary possibilities: a) incest was excluded from our study; b) persons victimized by those close to them are reluctant to call on the police; c) patrolmen are hasty in writing their reports when it comes to the nature or extent of the the relationship between the parties involved in an incident. Finally, our coding may differ from the ones used by other researchers, since we put cases where the assailant was a complete stranger in the same category with the ones where the the parties involved in an incident seemed vaguely acquainted.

Table 15 The Assailant-Victim Relationship

Assailant is ...	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Husband (legal or common-law)	0	0	3	1.1	3	0.4
Ex-husband	1	0.2	2	0.7	3	0.4
Friend or former friend (lover)	10	2.2	7	2.5	17	2.3
Family member	6	1.3	10	3.6	16	2.2
Acquaintance	58	13.0	51	18.4	110*	15.2
Unknown or vague acquaintance	362	81.2	196	70.8	558	77.1
TOTAL	446	100.0	277	100.0	724**	100

* Year is not known in one case.
** Missing data: 16; 8 for each time period.

From Table 15, we can also see that even though the husband's immunity from prosecution was abolished by Bill C-127, very few charges have been laid for sexual assault by a husband or ex-husband. Moreover, this statistical observation will be confirmed by our interviews in Part Three, Chapters 1 and 2.

Minors seem to be victimized by those close to them more often than adults are, but the difference is statistically insignificant. Nor do we detect any difference before and after the new legislation came into effect regarding the relationship between the parties involved in an incident, even when we offset the bias in the sampling procedure.

Alcohol or drug consumption

This variable is generally included in victimization studies to see how greatly the victim may have contributed to her own misfortune. This information is of limited value here since it is usually based on the subjective police assessment.

In 103 cases (14 per cent), the police report indicates intoxication. Five hundred and twenty four (70 per cent) mention that the victim did not seem to have been taking anything. No information is available in the rest of the cases (16 per cent). We found no difference in the two time periods.

The presence or absence of signs of intoxication, as noted in the police summary, could not be read as reliable data as established, for example, by a blood alcohol test. There is reason to believe that the police officer will note such consumption when he/she thinks this information may support the decision on whether or not to prosecute.

Multiple victims

We have seen that five per cent of assaults (N=35) involved more than one victim. The small number of cases makes it impossible to draw a profile of these "second" victims. Almost all of them were women; all of them were young. The same was said of single or "primary" victims.

4.2.2.2 Suspects

Group assaults occurred in 12 per cent of the cases studied. Thus, 88 per cent of sexual assaults would seem to be committed by a single individual. The following tables show the results of our compilations for single suspects or, where there are multiple suspects, of the "prime" ones, in other words one suspect per case. We may add that results remained constant during all four years studied.

Table 16 Number of Suspects Involved

Number of suspects	N	%
1	645	87.5
2	51	6.9
3	26	3.5
4	7	0.9
5	6	0.8
6	2	0.3
	737	100.0

* Missing data: 3.

Age and sex of suspects

Suspects are considerably older than victims, 54 per cent of them being more than 25. The mode lies between 21 and 25. The median, however, is age 27. Graph 4 shows the age discrepancy between victims and suspects. At age 18, the chances becoming a victim are tremendously greater than those of being an assailant. In early adulthood, the risk of victimization falls off spectacularly while the probability of becoming an abuser shows a considerable increase.[11]

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[11] The reader will have to realize, looking at Figure 4, that the apparent increase from age 18 to 25 is due mainly to an uneven age group distribution.

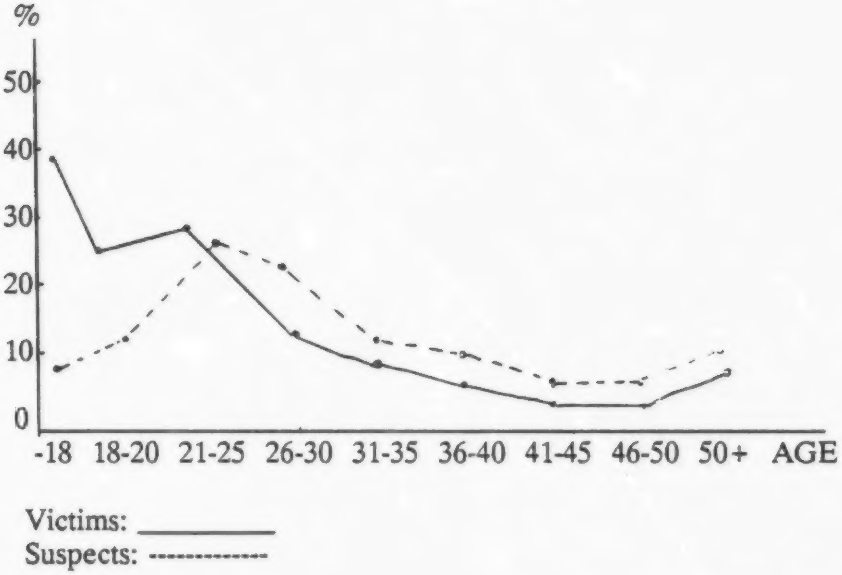
Table 17 Suspects' Ages

Age	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
Under age 18	32	7.4	29	10.5	61	8.6
18-20	53	12.3	29	10.5	82	11.6
21-25	119	27.5	62	22.5	182	25.7
25-30	98	22.7	61	22.2	159	22.5
31-35	35	8.1	35	12.7	70	9.9
36-40	30	6.9	26	9.5	56	7.9
41-45	19	4.4	11	4.0	30	4.2
46-50	21	4.9	4	1.5	25	3.5
51-55	13	3.0	7	2.5	20	2.8
Age 55 and over	12	2.8	11	4.0	23	3.2
	432*	100.0	275**	100.0	708	100.0

* Missing data: 22

** Missing data: 10

Figure 4 Victims' and Suspects' Ages (1981 - 1985)



This result strikes us as especially important to keep in mind. It must be added that virtually all suspects (99.6 per cent) were males. In our 740-case sample, only eight women were identified as the presumed authors of or accomplices in sexual assault.

Personal circumstances and occupation

More often than not, this information is not available from police reports prior to or following Bill C-127. We do not know the civil status of three quarters of the suspects. The 278 cases where the data exist show one-third of the suspects as being married or living common law.

Approximately 46 per cent of presumed assailants were unemployed. To this is added a high percentage (40 per cent) of unskilled workers. Table 18 showing this situation is rounded off. At first glance, it would seem that suspects come from underprivileged groups in society. This statement calls for two caveats: first, a great number of data are lacking (60 per cent), and so our information is not scientifically valid; second, we are dealing only with assaults reported to police. The periods following and prior to Bill C-127's coming into force show no statistically significant difference.

Table 18 Suspects' Occupations

Occupation	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Unemployed, student, retired, social assistance	79	42.0	54	54.5	133	45.9
Unskilled trade	74	40.2	41	38.3	115	39.4
Skilled trade	21	11.4	10	9.3	31	10.6
Professional	10	5.4	2	1.9	12	4.1
TOTAL	184*	100.0	107**	100.0	292	100.0

* Missing data: 270

** Missing data: 178

Alcohol and drug consumption

Here again, our data depends on the perceptions of police officers who, in any event, made no comment in more than 50 per cent of the cases. Going by this source, 55 per cent of presumed assailants showed signs of intoxication at the time of the assault or police involvement. This information is therefore to be used with the greatest circumspection. Yet this same source mentions rarer signs of intoxication in victims. Obviously, this study will be unable to assess the role of drug or alcohol consumption in sexual assault.

Criminal record

This information is missing in 465 cases (63 per cent). In the 275 where it was available to us, 127 (46 per cent) of the suspects are described as having criminal records, and of this number, a little more than one-third (36 per cent) had apparently already been prosecuted for sexual assault. We could draw no conclusion from these figures, given the high percentage of cases where the information was unavailable.

Multiple assailants

At least 87 per cent of the cases studied had only one assailant. The 95 gang rapes involved 250 suspects, but we investigated only two suspects per complaint. What needs to be brought out in these gang rape cases is that the suspects seem most often to be between age 25 and 30, and they elude justice more often as well. Our case pool was too small to yield reliable trends.

Some salient points

According to the police files, victims of sexual assault are much younger than their assailants and almost always female, while the assailant is male. Often victims are students, single and living with a family member. Again, they stand out from their assailants who are mainly unemployed or in unskilled occupations. In addition, some of them, again according to the police files, have criminal records. The presence of alcohol or drugs was noted in half of the offences.

4.2.3 Reporting the crime

Who calls the police, when, and with what outcome?

4.2.3.1 Reporting source

Shapland et al. (1981) were among the first researchers to point out that the immediate victim is not the only reporting source for police. Our interviews with victims will support this observation. Table 19 shows that only 60 per cent of reports are made by the victim, while 37 per cent were made by complainants other than the victim (witnesses, family members, etc.).

Table 19 Reporting Sources

Source	N	%
Victim	438	60.3
Witness	14	1.9
Informant	7	1.0
Complainant	267	36.8
TOTAL	726*	100.0

* Missing data: 14

Complainants are usually close to the victim: relatives, spouses or, on occasion, professionals. It is therefore not surprising to see the vast majority of these complainants (77 per cent) acting for victimized minors.

We wanted to see whether reporting sources had changed over the years studied, and to do this, analyzed raw and weighted data. Table 20 presents a "before-and-after" comparison based on a projection covering all the Montreal Urban Community Police Department files. To some extent, this corrects the bias from our sampling procedure. After correction, we see that barely more than half of the victims reported the crime themselves. Victims seem to have been a little more active since 1983, which is surprising as they are also younger.

Table 20 **Reporting Source Pre and Post 1983 (Weighted Data)**

Source	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Victim	358	43.6	1030	56.2	1388	52.3
Witness	23	2.8	35	1.9	58	2.2
Informant	16	1.9	20	1.1	36	1.4
Complainant	425	51.7	747	40.8	1172	44.2
TOTAL	822*	100.0	1832	100.0	2654**	100.0

* For the year 1981, data are weighted for only 13 police districts out of 24

** Missing data: 6

4.2.3.2 Reporting time

In 80 per cent of cases, the offence was reported to police the same day or next day. Even in the other cases, reporting was fairly quick except for seven per cent where it occurred more than fifteen days after the assault. Almost all of these latter situations involved children who were abused for quite a long period of time (up to two years).

Table 21 **Delay from Assault to Report**

Report time	N	%
Same or next day	597	80.9
2 to 7 days	69	9.3
8 to 15 days	20	2.7
16 days or more	52	7.0
TOTAL	738*	100.0

* Missing data: 2

Here, in more concrete terms, are the main reasons noted for delays in reporting:

> "The victim had been masturbating the assailant regularly for over a year when one day, a girlfriend caught them by surprise."
>
> "The offences took place over a two year period."
>
> "Seeing that something was wrong, her parents asked the victim and she told them that sexual intercourse had been going on for over two years."
>
> "A year later, overhearing a telephone conversation between the suspect and the victim, the complainant became aware of what was going on."
>
> "It had been going on for a few years, but the victim decided to tell her mother about it today."

In the adult population, a victim may not make a complaint until she notices the consequences: vaginal infection, emotional disturbance, pregnancy, etc. The police reports are not very explicit.

We noted that in almost 25 per cent of cases, the victim had been threatened with reprisals if she reported the offence (Table 22). This too might explain the delays.

Table 22 Threats After Offence

Threats	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Yes	91	21.9	66	25.4	157	23.2
No	324	78.1	194	74.6	519	70.8
TOTAL	415	100.0	260	100.0	676*	100.0

* Missing data: 64

Did we note changes after Bill C-127 came into force? Neither the raw nor the weighted data give the slightest indication.

4.2.3.3 Some salient points

So who reports the assault and when? With the data from the police, we can infer that very often (48 per cent of the time), it is not the victim herself who calls the police after the incident, but persons close to her or health professionals. This fact is all the more understandable in that many victims, as we have seen, are very young. On the other hand, the interval between the incident and contacting the police is generally quite short. When it is longer, the reason often is that young children are involved and the sexual activity is discovered after some time has gone by.

4.2.4 Police action

When an assault is reported immediately after its occurrence, patrolmen will go to the victim's or other complainant's home, or else visit the scene of the crime. Late reports are generally made at the police station. In the third section of their own reports, police give a fuller description of their immediate action in terms of assistance to the victim and efforts to identify a suspect or look for evidence.

4.2.4.1 Immediate action

More than two-thirds of victims apparently received no specific assistance from police (Table 23). This is surprising, given the policy of immediately directing victims to designated hospitals. It should be remembered, however, that 20 per cent of the victims did not report their assaults right away. In these cases, referral to the hospitals would have been less appropriate. Still, in spite of the directives issued by the Montreal Urban Community Police Department, only one-quarter of the victims were driven to hospital. Some victims (four per cent) refused police assistance, or family members did so on their behalf. In a small percentage of cases, police stated that they referred victims to an aid centre or offered transportation. In the raw as well as the weighted data, no change is seen after Bill C-127 came into force. The police even seem to have cut back their involvement since 1984. Yet these results are not significant.

Table 23 Police Action for Victims, Pre and Post 1984

Type of action	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
Referral to aid centre	3	0.8	0	--	3	0.4
Transportation to hospital	121	28.3	69	25.9	190	27.5
Transportation to hospital was offered but refused	13	3.2	12	4.4	25	3.6
Transportation to relatives, friends, home	9	2.2	2	0.7	11	1.6
Other	8	1.8	2	0.9	10	1.4
No action	271	63.8	180	68.1	451	65.4
TOTAL	425	100.0	265	100.0	690*	100.0

* Missing data: 50

The small number of actions recorded under "Other" consist mainly of advice to victims or the people around them: bring civil proceedings, move away, accompany the child to school, etc.

Finally, we must realize that no mention of a type of action does not necessarily mean that the police have done nothing. The fact is that in a certain number of cases, they did not record any action in writing.

Table 24 Police File Notations, Pre and Post 1983

Notations	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
Suspect identified/ classified without indictment	1	0.2	--	--	1	0.1
Charge unfounded	2	0.4	--	--	2	0.3
Further investigation not recommended	38	8.5	18	6.3	56	7.6
Complainant charged with public mischief	--	--	2	0.7	2	0.3
Investigation required	408	91.0	267	93.0	675	91.7
TOTAL	449	100.0	287	100.0	736*	100.0

* Missing data: 4

4.2.4.2 The investigation

The objectives of the police investigation are to identify suspects and gather evidence. As this process is outlined in greater detail in Chapter 1.0 and Part Three, we may merely mention at this point that the investigator assigned to the case has to make a decision within hours or days after the offence has been reported. Basically, he/she goes ahead with the investigation or he/she does not. In 92 per cent of the cases in our sample, a more thorough investigation was required. Only two charges were considered groundless at the initial investigation stage. In eight per cent of cases, it was decided not to continue the investigation for often unspecified reasons. Sometimes, there is a mention that one of the parties has left the city or province, or that the victim is refusing to cooperate. There is no significant difference between the two time periods, possibly owing to the way we made up our sample. Consequently, we weighted our data. The results are seen in Table 25.

Table 25 Police File Notations, Pre and Post 1983 (weighted data)

Notation	BEFORE 1983 %	AFTER 1983 %	TOTAL %
Suspect identified/ classified without indictment	0.2	--	0.1
Charge unfounded	4.1	--	1.6
Further investigation not recommended	7.4	8.3	7.9
Complainant charged with public mischief	0.2	0.5	0.4*
Investigation required	88.1	91.2	90.0
TOTAL	100.0	100.0	100.0

* Projection based on 2 cases.

The only change to be noted between the two time periods, according to the weighted data, has to do with unfounded charges. In 1981 and 1982, 49 charges (four per cent) were deemed unfounded in the initial police investigation, as compared to none in 1984 and 1985. This may indicate an actual change, but it is also possible that, with their new directives, police officers are tending to classify unfounded charges as cases not calling for investigation. As we shall see, their remarks support this second possibility. Finally, the variation between the percentages of unfounded charges in the actual data and in the projections is accounted for by the fact that these were minor infractions underrepresented in the sample.

In theory, a frivolous charge could result in the complainant being charged with public mischief. The data show only two instances of such a charge being laid during the four years studied.

Investigation techniques may include: filing a medical report; using the polygraph; identifying the suspect by photographs; fingerprinting; and lineups.

Whereas the police files tell us that at least 52 per cent of victims saw a doctor, medical reports were produced in only 20 (5.6 per cent) of them. We may wonder whether the absence of medical evidence might not prejudice a police investigation.

There was no mention of the polygraph being used on either suspects or victims. In 63 per cent of cases where a suspect is identified, it is because the victim knew her assailant. Other means of identification include photo albums (22 per cent), lineups (nine per cent), discovery during the act (four per cent) and fingerprint comparison (only one case).

4.2.4.3 Some salient points

We note with some surprise that police, on the basis of their own reports, give victims one form of assistance or another in fewer than one-third of these cases. Police action afterwards becomes more pressing, since in over 90 per cent of cases an investigation is recommended, which supports what the police said in interviews (Chapter 7.0) to the effect that all charges are treated as founded. There is nothing new here, however, since the same attitudes are seen in both of the periods we studied.

4.2.5 The investigation results

Suspects were identified in only about 30 per cent of the cases (some information is missing). Obviously, there can be no prosecution without a defendant. If we exclude the 60 cases where no investigation was recommended, we find that 31 per cent of cases culminated in a charge and that in the vast majority (61 per cent) of these cases, the victim knew her assailant. Some 94 per cent of the cases where the the parties involved in an incident were acquainted, in fact, led to charges, which would contradict the belief that these cases are dealt with lightly.

Forty-eight charges (seven per cent) were declared unfounded, a very different result from Clark & Lewis (1977), who obtain a 64 per cent rate for unfounded charges in Toronto. The two main reasons used in rejecting complaints were: 1) a subsequent confession by the victim; 2) the victim's lack of credibility. Here are some examples from the files:

Subsequent confession:

> "The victim had invented the whole story to explain being late for work."
>
> "The victim and assailant are mentally unbalanced. The victim confessed that no assault had taken place."
>
> "The victim finally confessed that she had asked one of the assailants to have sexual intercourse with her."

Victim's lack of credibility:

> "The victim's story was inconsistent and changed when her friend was present. The story seems to be made up so that her friend would not send her away."
>
> "The victim was heavily drugged at the time of the incident."
>
> "This young victim is a girl with problems. She told two different versions of the incident and the details of her story are contradicted by the facts."
>
> "The victim is a prostitute. She was completely drugged at the time of the offence. Her statements are constantly changing."

In 18 per cent of cases (N=119), the case was filed without charge for the following reasons:

	N	%
Lack of evidence	21	19.6
No cooperation from victim	29	24.4
Charge withdrawn	53	44.5
Other (suicide or death of defendant, complainant has no credibility, etc.)	16	13.4

Under "Lack of evidence," we found that a suspect's having no criminal record reinforced the suspect's credibility in the eyes of an investigating officer.

The reverse is also true: When a suspect had been charged with a similar offence, the victim's credibility increases.

A victim's or complainant's decision to withdraw a charge seems to pose problems. Sometimes, the victim wants to forget the whole business as quickly as possible. Most often she is worried about reprisals. In such cases, victims or police may seek legal advice. Conflicting recommendations come from the legal advisors. Those connected with the victims or complainants advise them to withdraw the charge (two cases reported in the files). When the police approach a crown attorney concerning the victim's wish to drop her charge for fear of reprisals, they are sometimes told to bring an information, sometimes to halt proceedings.

Table 26 Police Investigation Results, Pre and Post 1983

Result: charge	**BEFORE 1983**		**AFTER 1983**		**TOTAL**	
	N	**%**	**N**	**%**	**N**	**%**
Indictment	110	26.7	97	36.9	297	30.7
No indictment	83	20.1	36	13.7	119	17.6
Unfounded	24	5.8	24	9.1	48	7.1
Inactive	195	47.3	106	40.3	301	44.6
Total	412	100.0	263	100.0	675*	100.0

* Sixty-one (61) cases were abandoned previously, in pre investigation; missing data = 4.

Inactive charges almost always involve cases where no suspect has been identified. According to Table 26, police effectiveness has increased over recent years: a few more charges have been laid. There is much to indicate that during the two years following passage of Bill C-127, police conducted more accurate, painstaking and objective investigations. Table 27 also supports this assertion, this time based on weighted data. It shows us more cases being dealt with through charges being laid, but also more charges considered to be unfounded. Nevertheless, the observed differences are too minor to be seen as significant.

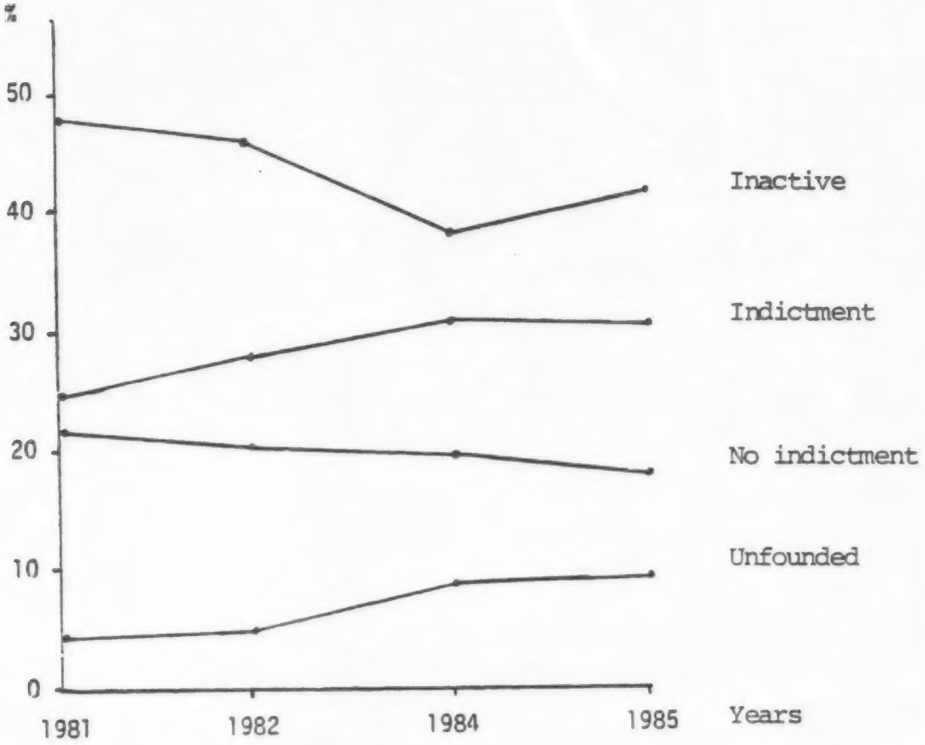
We had hoped to be able to isolate the most significant factors affecting the decision by police to proceed with a charge or not. It seems that the most significant variable involved in this decision is the ability to identify a suspect. When this variable is controlled, we are unable to identify trends among the other decision-making factors. There are too few cases in each box.

Table 27 Police Investigation Results, Pre and Post 1983 (weighted data)

Result: **charge**	**BEFORE 1983** **%**	**AFTER 1983** **%**	**TOTAL** **%**
Indictment	27.2	31.6	29.9
No indictment	21.5	19.7	20.4
Unfounded	4.4	8.8	7.1
Inactive	46.9	39.8	42.6
TOTAL	100.0	100.0	100.0

How much time passes between the assault and the filing of a formal information with the court? Very little. In 63 per cent of cases, application to bring proceedings was made within seven days after the assault; over the following three weeks in 13 per cent of cases; over the next 11 months in 16 per cent; and after more than a year in four per cent of cases. In other words, investigations are concluded quickly. Otherwise, they have little chance of success. This result is consistent with the fact that the cases that are cleared up are mainly ones where the victim knew her assailant.

Figure 5 **Results of police investigations into sexual assaults, 1981-1985 (weighted data)**



Sometimes, the reasons for delays appear in the file. Aside from cases where the victim and suspect are acquainted, we are looking mainly at chance identifications:

> "The victim identified the assailant a year later when she saw his picture in the paper."
>
> "The suspect was arrested for another sexual assault and confessed to committing this rape."
>
> "The suspect's alibi was contradicted during the investigation of ... (another case)."

One case stands out. The victim is aged 75. Her suspected assailant called her mentally unbalanced. She was put through psychological tests and judged to be of sound mind. The information was forwarded to the crown attorney on receipt of the psychologists' report.

Table 28 Delay from Assault to Information

Delay	**N**	**%**
Within a week	126	62.7
Within a month	35	17.4
Within a year	32	15.9
Over a year	8	4.0
TOTAL	201*	100.0

* Missing data: 7

The only difference we can see since Bill C-127 came into effect, in either the real or the weighted data, is a slowdown in investigations. Is this the result of more painstaking investigative work or administrative change? When they are defended in the files, delays are ascribed to: 1) problems locating a suspect; 2) the victim's reticence.

4.2.6 Conclusion

The data related to offences and the parties involved in an incident will be put into perspective in the following chapters.

At this point, it is important to keep four considerations in mind:

1) police practices seem to be virtually unchanged between the two time periods under study;

2) victims may have been a little more active, even when their cases were dubious;

3) police are making little use of their discretionary power when deciding whether or not to carry out an investigation and to proceed with an information;

4) since 1981, there would seem to be little basis for the charges of sexism made against the police. We admit that this study does not enable us to make a real evaluation of a change. For example, how many sexual assault charges were laid under other names (offence against public order, breaking and entering, assault bodily harm, etc.)?

In short, we have to study the other data before making a judgment.

5.0 THE AID CENTRE FILES

In the chapter dealing with resources, we saw that four aid centres serving adult victims of sexual assault exist in the Montreal Urban Community: two hospitals and two community centres. They all opened their doors at approximately the same time. One of them, the Mouvement contre le viol (Anti-Rape Movement) has changed its orientation somewhat over the years. At the time of our study, the Hôtel Dieu clinic was getting ready to develop a data collection system. As for Montreal General Hospital, it is working in close cooperation with the Metro CLSC Centre. (N.B. CLSC is the acronym for the French for Local Community Services Centre.) These considerations prompted us to choose the last centre for data collection.

After outlining our research procedure, we will present our results.

5.1 Methodological approach

As we did in presenting the police files, we will move in chronological order.

5.1.1 Population

We learned in an initial meeting with the centre's management that they had dealt with 730 cases since opening in 1980, that their files on these cases were not classified by year of offence or type of offence, and that they generally contained nothing but interview notes. It was decided, therefore, to take all cases relevant to our study, rather than just a sample.

We were expecting to get between 400 and 500 cases, but in the end, the total was only 144. The workers looked at all their files and sorted them according to the following criteria:

1) the assault had to correspond to the types of offences being researched;

2) the file had to contain enough information for our questionnaire to be filled out fully (or almost fully);

3) data collection ended on June 1, 1987.

It happened that a very large number of cases did not match the offences being studied. In particular, a large number of clients had been victims of incest. On occasion, it was the victims' mothers who came to the centre. Also, and in line with the centre's objectives and overall philosophy, a number of files were incomplete from a research standpoint. When a client asks only to talk, no attempt is made to get her address and telephone number or information about the assault. In such cases, the files could not be used for research purposes.

5.1.2 Data collection

The data were collected by two of the centre's workers and not by our researchers. There were two reasons for this:

1) as the file needed to be read in its entirety, confidentiality had to be maintained;

2) the workers were in a better position to ensure data accuracy.

The precoded information gathering grid was developed in line with the mandate assigned to the research team and the centre's data-collection potential. It was submitted to the workers, revised to reflect their comments, pretested and then revised again. It encompasses four topics: the assault, the victim, the assailant and the action taken by the centre.

5.1.3 Data analysis

As with the other questionnaires, an interpretation and coding grid was drawn up. As far as possible, the codes for open questions were attuned to those in the police and court questionnaires. Analysis is limited to describing results.

5.2 Data collected

In this section, we are going to present the results we obtained based on the Metro C.S.L.C.'s victim assistance centre files. These files cover 144 cases since the centre opened in 1980. Data are indexed on the assault as such, time and place of the assault, the methods used by the assailant and injury sustained by the victim. Also mentioned are the types of sexual acts committed. This will be the first subject we analyze. Additionally, and this will form the subject of a second section, we have a few data on the victims' sociodemographic profiles including age, sex and occupation and, to a very small extent, on the assailants. On the other hand, we do know what relationships linked the two parties -- apart, obviously, from the assault itself. Finally, a concluding section will focus on the special relationship between the victim and the aid centre: who referred her; why she came in; what type of action the centre took in her case; and whether she had taken prior steps in the matter.

5.2.1 The offence

Where, when and in what manner did the assault take place? To what acts did the victim have to submit and what consequences did these have? In what respect are victims approaching an aid centre similar to or different from the victims we researched in the police files? This is what we are going to describe in the following lines.

5.2.1.1 Year of offence

Although the Metro CSLC Centre for Victims of Sexual Assault did not begin operating until 1980, it did have to deal with some victims who had been assaulted prior to that time, with some cases going back even over twenty years. For the purposes of defining timelines, we may distinguish three periods: the one before the centre opened; the one before Bill C-127; and, finally, the period nearest the present. On the other hand, we must keep in mind that since victims do come in long after the assault, the year that victims seek help from the centre is not necessarily the same as that of the offence.

Table 29 Year of assault

Years	N	%
1959-1979	11	7.7
1980-1982	51	35.7
1983	21	14.7
1984 to June, 1987	60	42.0

* Missing data: 1

We can see that 43 per cent of the assaults occurred before Bill C-127 came into effect, and 15 per cent occurred during the first year it was in effect.

5.2.1.2 Scene of the crime

As we have already stressed in the section dealing with police files, the place where the assault occurs may enable us, however imperfectly, to assess the victim's "gross negligence" or her reluctance to inform police of the offence.

Although the percentage of assaults occurring in automobiles is nearly the same in aid centre and police records, the police files show a much higher rate of assaults committed in public places (37 per cent as against 27 per cent among aid centre clients).

The aid centre's clients were, therefore, assaulted less frequently in public places. Given this, it is no surprise that virtually half of these clients (49 per cent) were assaulted either in their own or their assailants' homes, whereas these situations occur, all things being equal, less frequently (44 per cent of cases) in the records of the police.

The major difference between the two categories of victims assaulted in private, however, lies mainly in the fact that the aid centre victims were more often assaulted in their own homes (38 per cent as against 22 per cent in the police files) and slightly less frequently (11 per cent as against 18 per cent) in their assailants' homes.

Table 30 Scene of the offence

Places	N	%
Victim's home	38	38.
Assailant's home	11	11.
Vehicle	14	14.
Bar/cabaret/disco	1	1.
Street	16	16.
Other public place	10	10.
Other private place	10	10.
TOTAL	100*	100.

* Missing data: 44

Given the high incidence of missing data, Table 30 is to be read with caution. It does suggest, however, that a victim who is sexually attacked in her home might be more reluctant to call on police, since her assailant is probably close to her or a recent acquaintance.

5.2.1.3 Acts perpetrated on victims

There appears to be a striking discrepancy between the acts described in the police reports and those from the centre's files. We note, in fact, that almost all women approaching the centre were subjected to more serious sexual abuse. For example, more than three quarters of them were raped, whereas the police files show a similar situation in barely one quarter of cases.

Table 31 Acts perpetrated on victims

Acts	N	%
Rape	91	78.4
Repeated rape	7	6.0
Attempted rape	9	7.8
Touching	4	3.4
Fellatio/cunnilingus	2	1.7
Sodomy and/or attempt	2	1.7
Other	2	.9
TOTAL	116*	100.0

* Missing data: 28

Conversely, the sexual offences that seem the least serious to us, i.e., touching, are seldom cited in the aid centre (three per cent of cases), while they turn up 14 times more often in the police records (42.4 per cent). Remember that we used the seemingly most serious act in each case.

Can we reason from these comparisons that victims turning to the aid centre sustained a greater number of injuries and more serious injuries than the ones we read about in the police reports? One is inclined to think so, especially since this impression is confirmed by the fact that the seemingly less serious acts, i.e., touching, are rarely mentioned in the aid centre files, in contrast to the police reports.

In other words, sexually assaulted women turning to an aid centre do so because they were more seriously injured than others. This statement will be supported by the following analysis of coercive methods used and, particularly, injuries sustained.

5.2.1.4 Coercive means employed

The majority of the victims contacting the aid centre, along with the ones we know of from the police, have in common that they were targets of physical violence. Though physical violence seems to be the most frequent means of intimidation for both groups of victims, assailants often use some kind of weapon (firearm or blade) as a threat, and sometimes even drug their victims.

Table 32 Coercive means employed

Means	N	%
Verbal threats	16	23.9
Physical violence	37	55.2
Firearms	3	4.5
Other weapons	11	16.4
TOTAL	67*	100.0

* Missing data: 77

So far, the two victim groups were subjected to fairly similar pressures in similar proportions, either physical violence or weapons. Table 32 shows us that where verbal violence, or threats if one prefers, is concerned, many more of the aid centre's victims (24 per cent) were verbally threatened than those victims who only went to the police (barely five per cent).

We must not conclude from this *ipso facto* that aid centre victims are more vulnerable to verbal threats than the others, because the data here are hard to interpret and we must exercise great caution for a number of reasons. First, there is the fact that our aid centre data on coercion are very incomplete (missing data: 74). Moreover, the police, in this area of our data source, may not have attached enough importance to verbal threats as such, or else lumped them in with the "other threat" category that encompasses one fifth of their sample. On the other hand, it does seem logical, considering that a higher percentage of aid centre victims were assaulted in their homes, that they might have been subject to verbal threats.

5.2.1.5 Injuries

We have already emphasized that, according to police files, a very high percentage of assaults (75 per cent) had no serious physical consequences for victims and psychological consequences for very few (five per cent). Whatever the reasons for these data -- we mentioned a few of them earlier -- it still remains that, according to the aid centre workers, eight out of ten clients might suffer psychological disorders after being victims of a sexual assault. Obviously, to be fair about the police reports, we must remember that the police are not mental health specialists and also that the psychological consequences of an assault are not immediately apparent like some physical after effects such as pregnancy or venereal disease. When consultation takes place months or years later, as it does at the aid centre, physical injuries have often disappeared and what remain are life problems. Therefore, it seems logical to see a greater quantity of psychological after effects in that setting.

Table 33 **Injuries sustained by victims**

Nature	N	%
Slight physical injuries	6	6.1
Serious or multiple physical injuries	7	7.1
Psychological injuries	79	79.2
Other	7	7.1
TOTAL	99*	100.0

* Missing data: 45

5.2.1.6 Some salient points

In the picture we have just painted of sexual assault as reported by its victims, either to the police or to an aid centre, it may be said that we have uncovered some similarities and a few significant differences.

Basically, the differences can be explained by the kind of action involved in the two cases: policing or assistance. The fact is that a victim who has just been assaulted sexually, even mildly, may be motivated by fully justified anger or a need for protection to call on the police. The advantages of this seem obvious: Action is immediate, but it only deals with what is visible, such as physical injury, for example. There is an equally important factor. The victim does not feel too guilty. She has acted, even if only hand over the problem to other people. In short, the profile of victims who deal only with police seems to differ widely from that of victims who feel the need for psychological support. The latter group are, in fact, more likely to have been attacked in their own homes, where they have very frequently borne the brunt of serious violence. They are, therefore, very often hurt psychologically.

What comes next will enable us to flesh out these theories somewhat.

5.2.2 Victim and suspect

Our desire in this section would have been to paint a portrait of both parties involved in an incident of sexual assault, but as the aid centre, by definition, concentrates on victims, we lack valid information about assailants, except for the fact that they are almost always males.

However, the information about victims garnered from the aid centre files tells us their age, sex and occupation as well as their relationships with their assailants.

5.2.2.1 Victims' age and sex

Since, by definition, the centre addresses a female clientele, discrimination based on sex is automatically ruled out in these records. All the victims are women. But what were the ages of these female victims at the time of their assaults? Table 34 shows this distribution.

According to the data we have, victims using the aid centre seemed to be slightly older at the time of the offence than the ones we studied through the police records. Witness the fact that the average age of victims assisted is nearly 27 (26.6), whereas it varies between 21 and 22 for the periods examined in the cases recorded by police. In addition, the age curve for centre victims shows great homogeneity and is almost perfect; mode, median and mean converge perfectly a little above age 25.

Table 34 **Victims' ages**

Age	N	%
Under 18	19	17.0
18-20	16	14.3
21-25	36	32.1
26-30	19	17.1
31-35	12	10.7
36-40	4	3.6
41-45	3	2.7
46-50	1	.9
51 and over	2	1.8
TOTAL	112*	100.0

* Missing data: 32

Though an appreciable difference between the two groups (60 per cent of the aid centre group as compared with 36 per cent of the police group) emerges, mainly in the age categories from 21 to 35, this contrast has repercussions among the youngest victims as well. In fact, we find much fewer young victims under age 20 in the aid centre's clientele (31.3 per cent), than in the police group (54.8 per cent). Even in this last age group, we record still fewer young victims under age 16 at the CSLC (13 per cent of cases) than with the police, where they make up more than one third (34 per cent) of cases. However, these last disparities may be accounted for by the fact that the centre, as a rule, deals solely with victimized adults to avoid encroaching on the jurisdictions of the Youth Protection Directorate and other bodies specializing in youth problems. As we are concentrating here on age at the time of assault, rather than age at the time help is sought, it may well be that an adult comes now to discuss something that happened in her youth.

5.2.2.2 Victims' occupations

Though the aid centre's clients include a high percentage of students (47 per cent), this does not seem to be unusual. We find a similar percentage (45 per cent) in the police records. This occupational profile may reflect the ages of the victims who, as we have seen, are often quite young.

Table 35 **Victims' occupations**

Occupation	N	%
Unskilled	18	20.9
Skilled	9	10.5
Professional	3	3.5
Student	40	46.5
Housewife	1	1.2
Other	15	17.4
TOTAL	86*	100.0

* Missing data: 58

As far as the other occupational categories for victims are concerned, the police data seem to match quite closely the ones we found at the aid centre.

5.2.2.3 The assailant-victim relationship

According to the data we have, coming either from the aid centre or police records, very few sexual assault victims were attacked by persons who were or might have been very close to them: husbands or ex-husbands, lovers or ex-lovers, or else some family member or other.

The fact that the aid centre files show no husband and only one ex-husband might be explained by some victims being in shelters for battered women instead of their own homes. Additionally, the absence of close family members in these records may be accounted for by the fact that incest was excluded from our study. According to aid centre workers, a good number of their clients are incest "survivors."

Table 36 **The assailant-victim relationship**

The assailant is...	N	%
Husband	---	---
Ex-husband	1	.8
Lover or ex-lover	5	4.0
Family member	2	1.6
Acquaintance	39	31.5
Slight acquaintance	10	8.1
Stranger	67	54.0
TOTAL	124*	100.0

* Missing data: 20

Almost half (46 per cent) of centre victims admit knowing or believe that they know their assailants. This percentage, double the one in the police cases (23 per cent), may be accounted for by the fact that it is sometimes embarrassing, when we consider that the assault often takes place in the victim's home, to call the police about an assailant who has been invited there.

Assault would, therefore, seem to be committed much more often by strangers: over three quarters of cases (77 per cent) in the police files, and more than half the aid centre victimization cases (54 per cent).

5.2.2.4 Some salient points

With what data we do have on the victims of sexual assault, we can suggest that the ones who go only to the police are relatively younger than the ones dealing with an aid centre. In both instances, students represent an appreciable percentage of the clienteles. The various other occupational categories are equal in both samples. Finally, many more of the centre victims seem to have at least some acquaintance with their assailants in comparison to victims reporting the offence to police.

5.2.3 Seeking aid

It was important to find out when, how and why initial contact was made with the centre and, as far as possible, what the outcomes were.

The 144 cases chosen for study represent only about 20 per cent of the centre's client group. The remainder is made up of incest victims, victims' relatives and clients who need only some information or a telephone contact. This section therefore makes no claim to evaluate the centre's activities. What it does aim to do is clarify what the aftermath of sexual assault represents for persons coming for assistance.

5.2.3.1 Year of contact

From this viewpoint, it is hard to comment on Table 37, which deals with the year of a client's approach. However, one observation is called for. Even though we have not managed to cross the year of assault satisfactorily with the year of contact with the centre, the vast majority of victims seem to come in late.

Table 37 **Year of contact**

Year	N	%
1980	22	15.3
1981	27	18.8
1982	17	11.8
1983	22	15.3
1984	13	9.0
1985	11	7.6
1986 through June, 1987	29	20.1
TOTAL	141*	100.0

* Missing data: 3

5.2.3.2 Month of contact

According to Table 38, the heaviest months are January, May, June and July.

Table 38 **Month of contact**

Month	N	%
January	16	11.1
February	12	8.3
March	13	9.0
April	11	7.6
May	16	11.1
June	17	11.8
July	16	11.1
August	10	6.9
September	8	5.6
October	6	4.2
November	11	7.6
December	8	5.6
TOTAL	144	100.0

In fact, the record of consultations for the seven and a half years of the centre's existence shows us that these are the most active periods. Is it the influence of springtime, of summer, the aftermath of the Christmas holidays, or something else? We have no answer for this. Conversely, the slack period of centre activity falls in the months of fall and winter, as if this were a period of hibernation.

5.2.3.3 Referral source

In her initial contact with the centre, a victim of sexual assault may have come on her own because she knew about the CLSC service, or had heard of it through the news media or from acquaintances. Or else, she may have been referred by workers in the justice system or social or hospital services. How did the victims get to the centre?

Table 39 **Referral source**

Referred by	N	%
Police	5	4.1
Hospital	14	11.5
Information media	8	6.6
Social services	33	27.0
Acquaintance	20	16.4
No one (came on her own)	33	27.0
Other	9	7.4
TOTAL	122*	100.0

* Missing data: 22

Of all institutional groups, our data show that the social services send the greatest numbers to the centre, more than one quarter of its clients. These referrals from social services strike us as altogether natural, since the centre works closely with Montreal General Hospital. After this, in descending order come hospital centres, supplying one client out of ten, and then, at the bottom, the justice system.

Workers in the justice system seem to send very few people to the centre (4.1 per cent of referrals), and these few come solely through the police. We found no referrals by crown attorneys.

Though, as we have just seen, institutional groups overall help send the centre four out of every ten patients, many of them heard of the service through other sources, i.e, news media (6.6 per cent) and, especially, their acquaintances (16.4 per cent).

Finally, more than one quarter of victims (27 per cent) said that they came on their own, which would suggest that they heard about the service independently of the institutional network. Community organizations have also sometimes directed victims to the centre.

5.2.3.4 Reasons for initial contact

Why do sexual assault victims contact the centre? The data collection grid gave multiple choices and, for this reason, provided geometrical codes. We will look first at the situations in which contact was prompted by a single reason. After this, we will examine combined reasons to identify the requests most often made of the centre.

Single reasons

When a victim makes contact for one reason only, it is almost always because she wants moral support (91 per cent of single-motive contacts). In four cases, the clients were looking for personal therapy and, in one other situation, therapy as a couple.

Combined reasons

A victim, when approaching the centre, often has a number of needs to be met, and the centre must try to respond to all of them. The records tell us that when there are a number of reasons for the contact, the following are the most common combinations:

-	moral support and medical advice:	24 cases
-	moral support and therapy:	17 cases
-	moral support and legal opinion:	14 cases

Frequent requests

Of all the demands made on the centre, which are most frequent? As we might have expected, moral support is the need most commonly expressed. It accounts for more than half of all requests coming to the centre. After this, in descending order, come requests for medical advice (16.5 per cent) and psychological assistance in the form of therapy or consultation (11.4 per cent).

In addition to these requests, aimed at improving physical or mental well-being under the circumstances, other questions are brought to the centre that address more practical aspects of victims' experience. For example, a little over 10 per cent of all victims' questions have to do with legal information, then requests for assistance at various points in the process, such as accompaniment to court. Finally and surprisingly, the least common requests have to do with compensation.

Table 40 Frequent requests

Requests	N	%
Moral support	129	54.4
Legal opinion	26	10.9
Assistance at various stages	9	4.8
Psychological therapy/advice	27	11.4
Compensation	3	1.3
Medical advice	39	16.5
Other	4	1.7
TOTAL	237	100.0

The wishes expressed by victims of sexual assault may be grouped under two headings of unequal importance. First, there is the group of requests concerned with the victims' immediate welfare and often calling for the services of physical and mental health professionals (doctors, psychologists). Then there is a group of practical expectations dealing with down-to-earth matters: legal opinions, assistance in taking certain steps, details about compensation.

5.2.3.5 Laying charges

Not all victims of sexual assault lay charges with the police, a well-known fact that will command our attention later on. At the time of initial contact with the centre, the majority of victims (53.6 per cent) had already laid charges. We wanted to know whether or not the centre's workers were encouraging their clients to inform police of the offence and, if so, with what results.

More than three quarters (80.4 per cent) of the women who had not laid charges were told about the possibility of doing so, and in 91.7 per cent of these cases, workers even discussed the matter with them. Did this information and, where applicable, the ensuing discussion prompt sexual assault victims to lay charges against their assailants?

Not many victims seem to have decided to lay charges in the wake of these discussions. In fact, while half of them firmly refused to lay charges, only a slim 15 per cent took action and went to the police after talking with a worker. A number still hesitated to do so. Here is how their decision-making path looks:

Decision-making path of victims who had not laid charges

51 victims (46.4 per cent) had laid no charges
(33 data missing)

36 of these (80.4 per cent) had been informed of their right
(5 data missing)

33 of the preceding group (91.7 per cent) discussed the matter
(1 datum missing)

17 victims (50 per cent) laid no charge

5 victims (14.7 per cent) did so

11 victims (35.3 per cent) remained undecided

Thus, half of the victims refused to lay charges with police. Why? There are a number of reasons for this refusal and they vary from victim to victim. Excluding certain situations in which a charge is for all practical purposes a virtual impossibility -- for example, when an incident occurred many years ago when the victim was very young, took place abroad or else the assailant has since left the country -- we can still find a number of constants in the files we studied. For example, a number of victims admitted that they were afraid. What they feared in some cases were reprisals. In others, they were afraid of not being taken seriously. In many situations, the victim refused to lay charges because she knew her assailant well. He was a member of her inner circle, and she feared the social consequences of laying a charge. Finally, there were repeated allusions to the fact that the victim was so emotionally and psychologically disturbed that the decision as to whether or not to lay charges was the least of her worries.

Remember the position taken by the Metro CLSC on going to the police. Workers repeatedly told us that they did not want to influence their clients' decisions in any way, but that whenever the occasion arose, they would discuss the advantages and drawbacks of charges with them. The data collected from the records confirms this approach.

5.2.3.6 Form of the centre's involvement

In the pages above, we have seen what reasons victims had for going to the centre. It is now important to see how the centre responded to them. As indicated by Table 41, the centre has many services to offer. In 70 per cent of cases, its action took more than one form. When one service only is provided, this is almost always moral support (N=38), medical advice (N=36) and, sometimes, therapy (N=5).

Table 41 The centre's services

Services	N	%
Moral support	135	45.0
Psychological advice	37	12.3
Legal opinion	19	6.3
Referral to police	17	5.6
Referral to IVAC	12	4.0
Practical assistance	20	6.6
Referral to other organizations	16	5.3
Accompaniment to court	8	2.6
Medical advice	36	12.0
TOTAL	300	100.0

The commonest service combinations are:

- moral support and therapy;
- moral support and practical assistance;
- moral support and legal opinion.

Quite clearly, the centre plays a significant support role for its clients and this responds to a demand. It is also clear that it provides services that may not have been formally requested: referral to IVAC, police and other bodies.

Evaluating the centre was in no sense among our objectives in this research. Nonetheless, in the context of our overall goal, it is interesting to venture an estimate, however hazy, of the degree to which victim needs are being met. Table 42 outlines an initial answer to this question. It does so without judgments. It is enough to discern a close relationship between supply and demand.

Table 42 Services available and services requested at the centre

Services	Available		Requested	
	%	ranked	%	ranked
Moral support	45.0	1	54.4	1
Psychological advice	12.3	2	11.4	3
Medical advice	12.0	3	16.5	2
Practical assistance	6.6	4	4.8	5
Legal opinion	6.3	5	10.9	4
Referral to police	5.6	6	---	-
Referral to other organizations	5.3	7	---	-
Compensation - IVAC	4.0	8	1.3	7
Accompaniment to court	2.6	9	---	-
Other	---	-	1.7	6
	N (300)		N (237)	

5.2.3.7 Some salient points

Women using the centre seem to do so well after the sexual assaults of which they have been the victims. Those coming in are mainly referred there by social or hospital services and acquaintances, but a number come on their own. The justice system sends very few people to the centre. Victims seem to be looking mainly for moral support, although a variety of other requests are made of workers.

Thus, highly diversified services are provided in response to equally diverse demands. At the Metro CLSC, supply and demand are nicely complementary and occur very largely in the social health area. The legal sector seems less involved in both needs expressed and services available.

5.2.4 Conclusion

The data in this section have been presented with all kinds of reservations, given the small number of cases analyzed. We did deal, however, with the entire population of the centre as determined by the criteria for our study.

Let us remember that a number of clients made contact long after their assault, that they are young and students, but older than the ones in the police records. The assaults are serious and often include vaginal penetration. We also brought out the striking presence of psychological problems and, hence, requests for emotional support. The centre seems to be responding very adequately to these demands, especially as its action is coordinated with that of Montreal General Hospital. Yet we may still wonder whether these victims are receiving enough assistance in the judicial labyrinth, since the range of services provided by the centre studied, as well as others contacted, mainly reflect a social and health perspective.

6.0 THE COURT FILES

Without question, the 1983 reform had its most direct effects on the practices of the judicial system. And since this is where the impact of Bill C-127 was first felt, we have devoted very special attention to our comparative analysis of police and court records.[1] On its own, however, this process provides only a fragmented view of the judicial reality. In Part Three of the report, we will flesh this out with an account of the perceptions and reactions of some legal practitioners concerning these significant amendments to the Criminal Code.

At this stage in our study, we were attempting to find satisfactory answers to a host of questions. We were greatly concerned, for example, with the reform's impact on hearings and their outcomes. It was also important for us to be familiar with the characteristics of the complainants and accused, the nature of the acts that resulted in prosecution, and the circumstances in which the crimes were committed.

With this as our perspective, the files that we selected were literally sifted by the researchers to extract all relevant data. The extensiveness and quality of the information they found are, however, dependent on the information recorded in each file. The fact is that the documents in them vary from one file to another. Thus, although we are sure to find the procedural measures on which the inquiries or trials that took place were based, we are less certain to come across, for example, the report on the sexual assault made by the police, out-of-court statements by the defendant and complainant, the transcript of testimony heard during the preliminary inquiry[2] or presentence report. This situation accounts for the high percentage of missing data and our own decision not to consider the statistical tests of significance and correlation in our findings.

In the coming paragraphs, we will deal with the methodological approach chosen and then present the results of our investigations at the court.

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[1] As we have already mentioned, these were records from the Superior court of criminal jurisdiction and the Court of Sessions of the Peace. Cases analyzed come from the Judicial District of Montreal, which encompasses the Montreal Urban Community (MUC) and the City of Laval. They do not therefore correspond entirely to the police records, which deal only with the area of the MUC.

[2] This document is a valuable information source but exists only to the extent that one of the crown attorneys in the case requested it in preparing for trial.

6.1 Methodological Approach

Two data sources were explored in collecting variables at the court. The files for the years 1981 and 1985 were used directly by our researchers in the office of the Clerk of the Criminal Court, Montreal Court House. Data for the years 1982 and 1984, on the other hand, are taken from the study done in 1985 on this question by Mrs. Sylvie Gravel.[3] Naturally, we will identify sampling and collection methods according to whether they apply to one or the other of these two sources.

6.1.1 Sampling

The Gravel study deals with the same types of offences as our own. The techniques employed, however, are different.

6.1.1.1 The Gravel sample (1985)

The population was made up from the daily rolls of the Montreal Court House. The procedure is arduous and unreliable. Some 605 sexual assault cases were listed in this way, slightly little more than half of them chosen completely at random. For the years being examined here, 1982 and 1984, the samples are 142 and 140 cases respectively.

6.1.1.2 The specific sample for our study

Since Gravel did not study the years 1981 and 1985, we had to index the cases heard during these years and extract a sample that would be as compatible as possible with the previous study. We called on the court's data-processing service for a complete list of all files started during the four years under study. Owing to all kinds of problems unforeseen by ourselves and the court services, this list reached us seven months later. Offsetting this major delay was the fact that we ended up with a reliable population from which we could take a statistically representative sample. Table 43 shows the whole population constituted by data retrieval. For sampling purposes, we considered only the first count that was relevant to our study, as the other charges were generally less serious or else offences that accompanied the sexual assault, such as breaking and entering the home -- matters that fell outside the universe of our research.

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[3] Sylvie Gravel, op. cit.

The samples for the years 1981 and 1985 include 141 and 150 cases respectively for a total of 291 added to the 282 cases from the previous study. We were expecting to obtain the entire population for the rarest offences (attempted rape and aggravated sexual assault), half for the uncommon offences (sexual assault with a weapon and unlawful sexual intercourse) and one-third for the other types of assault. This is how the sample was constructed. However, as can be seen in Table 44, the ultimate result does not completely reflect our planning. We find it highly satisfactory nonetheless, if only because it encompasses 41 per cent of the population.

Table 43 First Count of Indictment for Sexual Offences for the Years 1981, 1982, 1984 and 1985 (Population)

	BEFORE 1983						AFTER 1983						TOTAL	
Types of offences	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault (female)	122	41.4	134	49.3	256	45.1	-	-	-	-	-	-	256	18.4
Indecent assault (male)	58	19.7	33	12.1	91	16.0	-	-	-	-	-	-	91	6.6
Attempted rape	11	3.7	12	4.4	23	4.1	-	-	-	-	-	-	23	1.6
Rape	83	28.1	82	30.1	165	29.1	-	-	-	-	-	-	165	11.9
Unlawful sexual intercourse	21	7.1	11	4.0	32	5.6	-	-	4	0.8	4	0.5	36	2.6
Sexual assault	-	-	-	-	-	-	281	81.4	387	81.1	668	81.3	668	48.1
Sexual assault with weapon	-	-	-	-	-	-	52	15.1	74	15.5	126	15.3	126	9.1
Aggravated sexual assault	-	-	-	-	-	-	10	2.9	4	0.8	14	1.7	14	1.0
Other	-	-	-	-	-	-	2	0.6	8	1.7	10	1.2	10	0.7
TOTAL	295	100	272	100	567	100	345	100	477	100	822	100	1,389	100

Table 44 Type of Offence from the Court Files for the Years 1981, 1982, 1984 and 1985 (Sample)

	BEFORE 1983						AFTER 1983						TOTAL	
Types of offences	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault	79	56.0	83	58.9	162	57.4	-	-	-	-	-	-	162	29.3
Attempted rape	11	7.8	9	6.4	20	7.1	-	-	-	-	-	-	20	3.5
Rape	38	27.0	49	34.8	87	30.8	4*	2.9	-	-	4	1.4	91	15.9
Unlawful sexual intercourse	13	9.2	-	-	13	4.7	-	-	4	2.7	4	1.4	17	2.9
Sexual assault	-	-	-	-	-	-	101	72.1	84	56.0	185	63.8	185	32.3
Sexual assault with weapon	-	-	-	-	-	-	28	20.0	59	39.3	87	30.0	87	15.2
Aggravated sexual assault	-	-	-	-	-	-	7	5.0	3	2.0	10	3.4	10	1.7
TOTAL	141	100	141**	100	282	100	140	100	150	100	290	100	572**	100

* Offences committed prior to 1983.

** Missing data: 1.

Table 45 Variation between Population and Sample (Court House, 1981-1985)

Charge	Total Court (%)	Total Sample (%)	Variation Sample/Pop'n
Indecent assault	25.0	28.3	+ 3.3
Attempted rape	1.6	3.5	+1.9
Rape	11.9	15.9	+ 4.0
Unlawful sexual intercourse	2.6	2.9	+ 0.3
Sexual assault	48.1	32.5	- 15.6
Sexual assault with a weapon	9.1	15.2	+ 6.1
Aggravated sexual assault	1.0	1.7	+ 0.7
TOTAL	100.0	100.0	

6.1.1.3 Total sample

In all, 573 cases were studied, or 50 per cent of the "pre-1983" population and 35 per cent of the subsequent population. We must also remember that rare offences are overrepresented in the sample, especially in 1981 and 1985.

6.1.2 Data collection

Data from the court files were amassed in the Court House for the Judicial District of Montreal using a precoded grid. The grid was designed to be as close as possible to the one prepared in 1985 by Mrs. Gravel and the two other questionnaires described in previous chapters. It has five parts:

1) legal classification: counts on the indictment, amendments to these counts;

2) characteristics of the offence: locations, means employed, consequences, types of acts committed;

3) the victim's sociodemographic characteristics and the type of relationship, if applicable, that she had with her assailant;

4) the assailant's sociodemographic characteristics;

5) the judicial process: pro-forma inquiry, preliminary inquiry, trial, sentence.

Naturally, more than one victim may be involved in a single case. In such situations, we have used only the first victim cited in the file. Most of the time, these were children and the data varied very little from one victim to another.

The interpretation guide reproduced in appendix defines our choices and the reasons behind them.

As we shall see later on, trials are infrequent, and these are the only cases where a file will be fairly complete. We thus had to deal with a large number of missing data.

6.1.3 Data analysis

For the new collection dealing with the years 1981 and 1985, we had to go through a number of checking and filtering procedures, normal enough when handling such diverse material.

Our analysis is basically descriptive, at least for now. It is based on data processing carried out with the SPSS program. In contrast to the police files analysis, we rarely needed weighting. Our sample was extensive and fairly well fitted to the population.

6.2 Data collected

Since the results of our investigations based on the police and aid centre files have already been presented, this section will bring out the differences and similarities noted in each setting as best it can. We will be dealing with the nature of offences, the characteristics of victims and defendants, and the judicial process from first appearance to final disposition.

6.2.1 The offence

Before going on to analyze the data in our sample, we will look at how charges are distributed for the whole population of the Judicial District of Montreal.

6.2.1.1 Types of offence and relative frequency

Over the four years under study, some 3,144 complaints were recorded by the police. In the same period, the court received 1,389 informations. A first glance would indicate a success rate of 44 per cent. According to the police files, however, only 31 per cent of the complaints led to an indictment (Table 26). This discrepancy is mainly accounted for by the fact that the police open only one file per offence, no matter how many victims or suspects are involved, whereas the court, acting according to the crown attorney's decision, proceeds to bring charges jointly or separately when there are accomplices, or else join or not join various counts of indictment in a single file. In addition, the variation may be explained by the fact that the City of Laval is part of the Judicial District of Montreal and the court clerk accordingly also receives the information from the files of that municipality. It should also be emphasized that in some cases the offence was committed years before proceedings were brought.

The total number of cases went from 567 in 1981 and 1982 to 822 in 1984 and 1985. Taking the year 1981 as our base figure, we observe the same curve as we did with the police: a slight drop in 1982 and a fairly considerable rise in 1985.

	Police		Court	
1981	734	--	295	---
1982	716	-2.7%	272	-2.1%
1984	790	+6.8%	345	+6.7%
1985	904	+23.0%	477	+12.6%

If we compare the types of offence in each of the two populations, we can see that the more serious an assault is, the greater the probability that it will end up in court. All things considered, however, the distribution of offences in police and court business is quite similar over the years.

6.2.1.2 The other counts

Our data indicate that it is very rare for the charge to be amended at the outset of proceedings or for there to be a discrepancy as to content between the information and the committal to trial (eight per cent of cases). When this has happened, it was usually to alter the order of charges or to reduce their seriousness. At least once, a court had to settle between "breaking and entering" and "sexual assault," when these two offences appeared in this order on the information. In this case, the prosecution reversed the order.

Table 46 Nature of the Second Count

Second count	**N**	**%**
Offence of a sexual nature	155	50.5
Forcible confinement, kidnapping	35	11.4
Robbery	33	10.7
Breaking and entering	26	8.5
Assault	26	8.5
Related offences (conspiracy, weapon, etc.)	32	10.4
Subtotal	307	100.0
Single count	263	(46.0%)
TOTAL	570*	100.0

* Missing data: 3.

In 54 per cent of cases, the sexual assault charge goes with other counts. Most often, these are other offences of a sexual nature, for example rape and indecent assault, common sexual assault and sodomy, indecent assault and acts of gross indecency. After these, the second counts of the indictment were, in order, forcible confinement and kidnapping, robbery, breaking and entering, assaults and various related infractions. In 20 per cent of cases, there is a third charge and, very rarely (0.5 per cent), a fourth. There is no difference worth mentioning between the two time periods under study.

6.2.1.3 Acts perpetrated on victims

In 39 per cent of the cases heard by the court, vaginal penetration (rape) had occurred. In the police files, remember, the percentage was 27 per cent, and at the aid centre, 84 per cent. The percentage of touching offences is virtually identical for police and the court. Whereas the police files are relatively explicit about the kinds of acts committed, the court's make no mention of this in 28 per cent of cases.

A comparison of Tables 44 and 47 supports the theory that the crime of rape was trivialized when Bill C-127 came into force if, of course, we maintain the penetration criterion for defining rape. But, to reflects legislators' intentions, another criterion must be added: the violence used. The groups and individuals communicating their concerns to legislators about the trivialization of rape as a crime felt, however, that penetration without consent involved an element of violence that could make the crime more serious, even if no blow was struck and no explicit threat expressed.

Given a very high incidence of missing data here, we have not felt it useful to reproduce the results of the crossing between the reason for indictment and the type of act committed. The partial data available to us do, however, indicate that penetration occurred in 36 per cent of sexual assaults and nearly eight per cent of indecent assaults.

Table 47 Acts Committed on Victims

	BEFORE 1983						AFTER 1983						TOTAL	
Types of offences	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Rape	29	25.4	41	36.3	70	30.8	37	38.9	33	37.9	70	38.5	140	34.2
Repeated rape*	17	14.9	-	-	17	7.5	-	-	1	1.1	1	0.5	18	4.4
Attempted rape**	7	6.1	-	-	7	3.1	-	-	-	-	-	-	7	1.7
Touching	41	36.0	54	47.8	95	41.9	46	48.4	29	33.3	75	41.2	170	41.6
Fellatio/ cunnilingus	17	14.9	12	10.6	29	12.8	11	11.6	17	19.5	28	15.4	57	13.9
Sodomy and attempt	2	1.8	-	-	2	0.9	-	-	6	6.9	6	3.3	8	1.9
Other	1	0.9	6	5.3	7	3.1	1	1.1	1	1.1	2	1.1	9	2.2
TOTAL	114	100.0	113	100.0	227	100.0	95	100.0	87	100.0	182	100.0	409.***	100.0

* For the years 1982 and 1984, this category has been amalgamated with "rape."
** For the years 1982 and 1984, this category has been amalgamated with "touching."
*** Missing data: 164.

6.2.1.4 Coercive means employed

In cases reported to police as well as the ones brought before the court, the principle method of coercion is still physical violence in more than half of the cases. We note a surprising and almost total similarity between the police files and those of the court.

We do not know, however, what methods were used in one-quarter of sexual assaults and 60 per cent of indecent assaults.

Table 48 Coercive Means Employed

Means	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
None	46	22.9	35	19.1	81	21.1
Verbal threats	8	3.9	7	3.8	15	3.9
Physical violence	8	3.9	7	3.8	15	3.9
Firearm	11	5.5	6	3.3	17	4.4
Other weapon	23	11.4	45	24.6	68	17.7
Other (combinations of prev.)	-	-	1	0.5	1	0.3
TOTAL	201	100.0	183	100.0	384*	100.0

* Missing data: 189.

6.2.1.5 Injuries

We were unfortunately not able to make our coding of this question agree with the ones put in the questionnaires for the police files and the aid centre. Table 49 suggests, nonetheless, that cases ending up in the courts have physical consequences, even temporary ones, more often than cases that do not get past the information stage.

Table 49 Injuries Sustained by Victims

Type	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
None	69	40.6	53	37.6	122	39.2
Violence with no physical consequences	83	48.8	60	42.6	143	45.9
Injuries needing treatment	15	8.8	25	17.7	40	12.9
Injuries needing hospitalization	3	1.8	3	2.1	6	1.9
TOTAL	170	100.0	141	100.0	311*	100.0

* Missing data: 262.

6.2.1.6 Scene of the crime

Almost 60 per cent of assaults occurred in the home of one of the parties (as against 42 per cent in police files). This is not surprising in that the chances of solving an assault case are tied to the victim's chances of identifying her assailant.

The unlawful sexual intercourse offences were committed in assailants' homes, as were almost half of the other assaults committed on victims who were also minors. Sexual and indecent assaults generally take place in the home, while aggravated assaults and assaults with a weapon take place outside it (in a street, public place, vehicle). It is worth noting, however, that the scene of the crime is unknown in 33 per cent of our cases.

Table 50 Scene of the Crime

Scene	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
Victim's home	52	22.0	57	27.5	109	24.6
Assailant's home	64	27.1	54	26.1	118	26.6
Victim's and assailant's home	15	6.4	14	6.8	29	6.5
Vehicle	29	12.3	16	7.7	45	10.2
Street	22	9.3	17	8.2	39	8.8
Other public place	35	14.8	30	14.5	65	14.7
Other private place	19	8.1	19	9.2	38	8.6
TOTAL	236	100.0	207	100.0	443*	100.0

* Missing data: 130.

There are very few differences between the two time periods in our study.

6.2.1.7 Some salient points

We have just seen in the preceding that the number of cases reaching court from year to year followed a curve quite similar to the one observed in the records of the police. Also, it is worth noting that we are able to conclude from our observations that the more serious an assault is, the more chance it has of ending up in court, and that in more than half of the cases the main charge is accompanied by other counts.

Moreover, since physical violence is the most frequently-used means used to subdue a victim, it is not surprising to see that cases ending up in court are mainly ones involving physical repercussions. Finally, the assaults that wind up are, in large part, those that occurred in the home of one of the parties to the incident.

Comparing the results obtained from the court records with those from police files, we see a striking similarity that invalidates, at least for now, the expectations or assumptions based on our review of the literature. The many studies in the United States, as well as the few Canadian ones (Clark and Lewis, 1976 and 1977; Gibson and Johnson, 1980; Stanley, 1985), have all reported a high percentage of complaints being filtered by police, partly on the basis of the nature and characteristics of the act reported to them. The only differences brought to light by our investigation -- and these are small differences -- have to do with the seriousness and scenes of assaults.[4] Before drawing any conclusion at all from these results, we have to look at the characteristics of the parties to the offence.

6.2.2 Victims and defendants

With our findings from the court, we were able to isolate some sociodemographic characteristics of victims and defendants. Here are a few.

6.2.2.1 Victims

In the following pages will be found various characteristics of victims appearing in court. As much as possible, we will try to compare these with characteristics found in the police files.

Number of victims involved

Of the cases we used in our study, some involved only one victim, others a number of victims. To make our analysis simpler in complex situations where the number of victims varied from two to eight, we decided to deal only with one of these victims, in the circumstances the victim whose name appeared first in the prosecution file.

Of the 573 cases used, then, some 434 (83 per cent) involved only one victim, while in the remaining 99, (17.3 per cent) of our sample, we selected the case of the first victim cited.

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[4] The tests are significant to $p < .01$, though with extensive missing data.

Victims' ages

As there is no perceptible variation in victims' age distribution between the pre-1983 and post-1983 periods, we have to say that the age profile of victims appearing in court has not differed appreciably with the advent of the new legislation.

The profiles of the group of victims laying charges with police and the victims found in the courts are also appreciably similar, except that we note a slightly higher percentage of under-25s in court (78 per cent as against 73 per cent with police). In this sense, the minors group is the sole exception worth mentioning, being proportionately more significant in court than in the police files. In short, a higher percentage of cases involving victimized minors come up in court than those of other age groups. Finally, needless to say, the victims seen in court are also very different in terms of age from the ones found at the aid centre who, as we have seen, are distinctly older as a group.

As we have already noted from the police files, the seriousness of an assault (according to its legal classification) tends to increase with the victim's age, at least until age 35. This trend emerges even more sharply in the court records, but we must repeat that cases involving minors are more often sent to court than are those involving persons aged 18 or over. Even though the way in which data were classified ruled out including Gravel's results (1985) in Table 52, the same trends were seen in that earlier study.

This statement is mitigated somewhat when we consider the nature of the acts committed and not solely their legal nomenclature. For example, we see that vaginal penetration by the penis or some object has occurred in 34 per cent of cases involving minors. Among adult victims, penetration occurred in 50 per cent of cases. Does this mean that, although youth cases are more often tried, we tend to minimize the seriousness of the acts committed on them?

Probably because of the larger numbers of male victims in the court than in the police records, cases of anal penetration are more prevalent and, here again, mainly involve minors. These assaults were described, not as "sodomy," which is not part of this study, but as "indecent assault" and "sexual assault."

Table 51 Victims' Ages

	BEFORE 1983						AFTER 1983						TOTAL	
	1981		1982		Total		1984		1985		Total			
Age	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Under age 18	82	60.7	46	37.7	128	49.8	55	43.3	56	47.9	111	45.5	239	47.7
18 to 20	18	13.3	17	13.9	35	13.6	22	17.3	10	8.5	32	13.1	67	13.4
21 to 25	19	14.1	29	23.8	48	18.7	20	15.7	18	15.4	38	15.6	86	17.2
26 to 30	7	5.2	10	8.2	17	6.6	15	11.8	14	12.0	29	11.9	46	9.2
31 to 35	4	3.0	8	6.6	12	4.7	9	7.1	9	7.7	18	7.4	30	5.9
36 to 40	2	1.5	3	2.5	5	1.9	4	3.1	5	4.3	9	3.7	14	2.8
41 to 45	2	1.5	4	3.3	6	2.3	1	0.8	1	0.9	2	0.8	8	1.6
46 to 50	1	0.7	3	2.5	4	1.6	--	--	1	0.9	1	0.4	5	0.9
Age 51 and over	--	--	2	1.6	2	0.8	1	0.8	3	2.6	4	1.6	6	1.2
TOTAL	135	100.0	122	100.0	257	100.0	127	100.0	117	100.0	244	100.0	501*	100.0

* Missing values: 12.

Table 52 Reason for Indictment by Victim Age*

Offence	IN 1981											
	18 & -		18 - 20		21 - 25		26 - 35		36 & +		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault	53	64.6	8	44.4	9	47.4	3	27.3	2	40.0	75	55.6
Rape	16	19.5	7	38.9	7	36.8	6	54.5	1	20.0	37	27.4
Unlawful sexual intercourse	13	15.8	0	0	0	0	0	0	0	0	13	9.6
Attempted rape	0	0	3	16.7	3	15.8	2	18.2	2	40	10	7.4
Sexual assault	--	--	--	--	--	--	--	--	--	--	--	--
Sexual assault with weapon	--	--	--	--	--	--	--	--	--	--	--	--
Aggravated sexual assault	--	--	--	--	--	--	--	--	--	--	--	--
TOTAL	82	100.0	18	100.0	19	100.0	11	100.0	5	100.0	135	100.0

(cont'd)

Offence	IN 1985													
	18 & -		18 - 20		21 - 25		26 - 35		36 & +		Total		TOTAL	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Indecent assault	--	--	--	--	--	--	--	--	--	--	--	--	75	29.8
Rape	--	--	--	--	--	--	--	--	--	--	--	--	37	15.7
Unlawful sexual intercourse	3	5.4	0	0	0	0	0	0	0	0	3	2.6	16	6.3
Attempted rape	--	--	--	--	--	--	--	--	--	--	--	--	10	4.0
Sexual assault	43	76.8	5	50.0	7	38.9	7	30.4	4	40.0	66	56.4	66	26.2
Sexual assault with weapon	9	16.1	5	50.0	10	55.6	16	69.6	6	60.0	46	39.3	46	18.3
Aggravated sexual assault	1	1.8	0	0	1	5.6	0	0	0	0	2	1.7	2	0.8
TOTAL	56	100.0	10	100.0	18	100.0	23	100.0	10	100.0	117	100.0	252**	100.0

* We were unable to compare with the years 1982 and 1984.

** Missing data: 39.

Sex of victims

The gender of sexual assault victims provides some interesting comparative data. In fact, though court records reveal few differences worth mentioning between victims' sexes prior to and after 1983, the same does not hold when we compare the police files with those of the court.

The percentage of charges heard by the court involving male victims, in fact, is more than double that recorded by police. More specifically, although for the whole period examined the police show a little under one complaint of ten as coming from sexually assaulted males, almost one in five will finally come to the attention of the court. This might be explained by the fact that male victims are mainly young boys who know their assailants.

Victims' personal circumstances

Do sexual assault victims appearing in court live alone or with other people? Are they more isolated, more vulnerable? Unfortunately, the data we have concerning victims' personal circumstances rule out a definite answer to these questions. Table 54 does tell us, however, that one victim out of five might be in comparable circumstances. These are adult victims living alone or sharing an apartment.

Table 53 Sex of Victims

Sex	BEFORE 1983						AFTER 1983						TOTAL	
	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Female	101	72.1	122	85.9	223	79.1	121	13.6	124	82.7	245	84.5	468	81.8
Male	39	27.9	20	14.1	59	20.9	19	86.4	26	17.3	45	15.5	104	18.2
TOTAL	140	100.0	142	100.0	282	100.0	140	100.0	150	100.0	290	100.0	572*	100.0

* Missing data: 1.

Table 54 Victims' Personal Circumstances

	BEFORE 1983						AFTER 1983						TOTAL	
Age	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Living with a husband/lover	11	10.8	9	11.1	20	10.9	17	16.8	8	9.8	25	13.7	45	12.3
Living alone or with someone not husband, lover or relatives	5	4.9	33	40.7	38	20.8	31	30.7	10	12.2	41	22.4	79	21.6
Minor	79	77.5	39	48.1	118	64.5	53	52.5	57	69.5	110	60.1	228	62.3
Adult living with parents	7	6.9	--	--	7	3.8	--	--	7	8.5	7	3.8	14	3.8
TOTAL	102	100.0	81	100.0	183	100.0	101	100.0	82	100.0	183	100.0	366*	100.0

* Missing data: 207.

The overwhelming majority (80 per cent) of victims whose cases are tried live with someone else. In fact, two out of three of these victims were living with their parents when they came to court. This is easily understandable given their youth, as we have previously noted. And the fact that these young victims live with their families might help explain why they are so strongly represented in court. Finally, slightly over 10 per cent of adult victims were living with spouses.

Victims' occupations

We know that typical victims exist for certain kinds of crimes. Does this apply to sexual assault? Are certain occupational categories more often subject to this type of criminality? Does the occupational spread as taken from court records give us any indications in this respect?

Should we be paying attention to the fact that two-thirds of the victims appearing before the court are, strictly speaking, not on the job market? Except for children aged five or under, one out of every five victims is unemployed (six per cent), out of the job market (10 per cent) or a homemaker (seven per cent). Others, representing over 40 per cent of victims appearing in court in sexual assault cases, are students.

The small number of sexual assault victims who are in the labour force (31 per cent) come mainly from unskilled occupations, with a few in skilled trades (10 per cent). Finally, professionals are rare in this context, and one reason for this might be that professionals generally work in more sheltered conditions.

Table 55 Victims' Occupations

	BEFORE 1983						AFTER 1983						TOTAL	
Occupation	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Victim aged 5 or under	3	2.3	4	3.4	7	2.8	3	2.5	1	1.1	4	1.9	11	2.4
Off the job market	9	7.0	22	18.6	31	12.6	3	2.5	13	14.4	16	7.7	47	10.3
Unemployed	1	0.8	12	10.2	13	5.3	13	10.9	--	--	13	6.2	26	5.7
Unskilled occupation	26	20.3	25	21.2	51	20.7	20	16.8	20	22.2	40	19.1	91	20.0
Skilled trade	12	9.4	13	11.0	25	10.2	13	10.9	8	8.9	21	10.9	46	10.1
Profession	--	--	2	1.7	2	0.8	1	0.8	2	2.2	3	1.4	5	1.1
In the home (homemaker)	6	4.7	11	9.3	17	6.9	9	7.6	6	6.7	15	7.2	32	7.0
Studying	71	55.5	29	24.6	100	40.7	57	47.9	40	44.4	97	46.4	197	43.3
TOTAL	128	100.0	118	100.0	246	100.0	119	100.0	90	100.0	209	100.0	455	100.0

* Missing data: 94.

The assailant-victim relationship

We saw in the preceding chapters that, according to statements made to police and aid centre workers, very few victims seemed to know their assailants.

If you recall, three quarters of the sexual assault victims in the first group and half those in the second group stated that they did not know who their assailant was. What happens in court? Are the witness-victim and assailant just as often complete strangers to one another?

Table 56 The Assailant-Victim Relationship

	BEFORE 1983		AFTER 1983		TOTAL	
Assailant is...	**N**	**%**	**N**	**%**	**N**	**%**
Spouse, lover, friend, former spouse/lover/ friend	7	3.5	20	11.0	27	7.0
Family member	14	6.9	23	12.4	37	9.5
Acquaintance	61	30.2	61	32.8	122	31.4
Slight acquaintance	67	33.2	38	20.4	105	27.1
Stranger	53	26.2	44	23.7	97	25.0
TOTAL	202	100.0	186	100.0	388*	100.0

* Missing data: 185.

Table 56, describing this assailant-victim relationship prior to the assault, tells us that those involved in such incidents and who go to court usually are not meeting for the first time. In fact, almost half (48 per cent) of the cases brought to the court's attention involve people who have either lived together, are members of a family or else are closely acquainted. Accordingly, since identifying the assailant is that much easier in such cases, there is something of a meeting of family or friends in the court room.

Are we dealing with strangers, then, in all other cases? Not so, since the files we examined indicate that often (21 per cent of cases), even when victims state that they did not know their assailants well, they still agreed to the contact that preceded the assault. Logically, this would indicate that, prior to things going sour, they wanted to become acquainted. Finally, the assailant seems to have been to be a total stranger to a remaining 25 per cent of victims (a typical example being someone who is suddenly assaulted on the street by a perfect stranger).

In short, though three out of four victims told police that they knew nothing of their assailants, the situation seems to be totally reversed when it is taken into court, where three quarters of the persons involved in an incident knew one another at least distantly. Remember that most informations are based on the victim's ability to identify her assailant(s).

Alcohol or drug consumption

Although many reservations can be expressed in this regard, often, when studying victims, we weigh the consumption of alcohol or drugs as a possible contributing factor to victimization. In any event, in at least one-third of the cases brought before the court, alcohol or drugs seem to have been present at the time of the offence and this, all things considered, is twice the incidence of intoxication found in the police reports.

Table 57 Alcohol and Drug Consumption

Consumption	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Yes	41	36.6	42	31.6	83	33.9
No	71	63.4	91	68.4	162	66.1
TOTAL	112	100.0	133	100.0	245	100.0

* Missing data: 328

For a number of reasons, however, we consider it advisable to issue a warning here. In the first place, the information we get through police reports is based on an officer's subjective assessment, unconfirmed by alcohol or drug detection tests. The officer may even have decided against including in his report whether or not such consumption was suspected. Remember too that cases reaching the court involve a higher incidence of people who know one another and are, therefore, able to venture an opinion as to whether or not substances were taken by the other party. Thirdly, the information we have from court records is both woefully incomplete -- we have no information in over half the cases (missing data, 328) -- and terse concerning quantities of alcohol or drugs consumed. Finally, given their differing effects, can we lump all the drugs together when some of them curb libido and aggression while others exacerbate these impulses?

Finally, remember how young these victims are. We would surely not be mistaken in suggesting that very few of the under-16s were intoxicated at the time of the offence.

Some salient points

Except for cases involving victimized minors, proportionately more significant in the court than in police records, the overall age profile for victims is fairly similar in both groups. Although we generally find more female victims, the percentage of male victims doubles between the two levels. It should also be stressed that an overwhelming majority of victims appearing in court are living with someone other than a spouse, and are to a large extent off the job market (many of them are students). On the other hand, by contrast to what we saw in the police files, those involved in a sexual assault incident are not strangers to one another in the court room. Finally, still speaking comparatively, the intoxication factor (alcohol or other) is mentioned much more frequently in court than in the police reports.

6.2.2.2 Defendants

One might have expected the court records to contain more information about defendants than victims. This is hardly the case, however, and, accordingly, we will have to deal with a high incidence of missing data in this section as well.

Number of defendants

Some 84 per cent of cases have only one defendant. In the others, the number of defendants may vary from two to eight. For the four years together, at least 657 persons were charged with the offences being examined in this study. In 34 cases, we do not know how many were charged, only that there were two or more.

When there is more than one defendant, separate proceedings are generally brought (71 per cent of cases). In this part, our sample is still based on the number of cases, 573, the first person charged in each case being the subject of investigation.

Sex of defendants

Only 1.4 per cent of defendants were female (three persons before 1983, five after). From police records, 99.6 per cent of defendants were male, and in court, 98.6 per cent.

Defendants' ages

As a rule, all defendants in adult criminal court must be older than 18. A single case in our sample deviates from this rule and is, undoubtedly, a Youth Court referral to adult jurisdiction.

Table 58 Defendants' Ages

Age	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
18 to 20	32	11.3	25	8.6	57	9.9
21-25	74	26.1	58	20.0	132	23.0
26-30	70	24.7	60	20.7	130	22.7
31-35	39	13.8	51	17.6	90	15.7
36-40	25	8.8	40	13.8	65	11.3
41-45	14	4.9	22	7.6	36	6.3
46-50	14	4.9	10	3.5	24	4.2
51 and over	15	5.3	23	7.9	38	6.6
TOTAL	283	100.0	290	100.0	572*	100.0

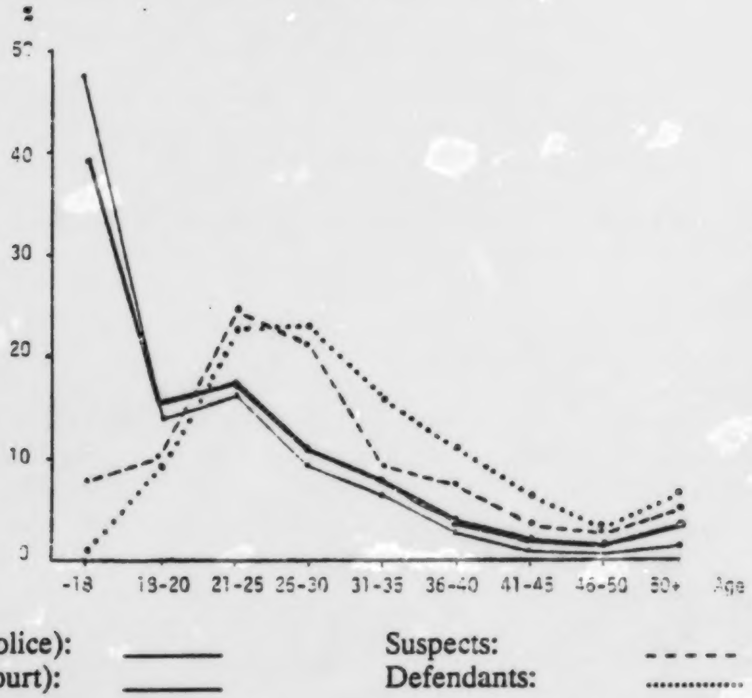
* One defendant was under age 18.

Since Bill C-127 came into effect, defendants' ages have gone up. Prior to 1983, 62 per cent of defendants were aged 30 or under. Since that time, only 49 per cent are in this age group. The percentage for the overall sample is 56. The mean age went from 30 to 34 years and, above all, the median age went from 28 to 31.

A comparison of Tables 17 and 58 also shows that defendants are older than suspects. If we take away the under-18s sent to Youth Court from the police files, we find that suspects aged 18 to 30 make up 65 per cent of the sample (67 per cent pre 1983 and 62 per cent post 1983). They are immediately seen as being younger than defendants. Two theories may explain this discrepancy: a) the suspects have grown older between the time of the offence and the court proceedings; b) young men are more likely to be let off by police. To sum up, it clearly emerges that in both instances, the under-30s are less numerous among suspects and defendants after 1983, but the change is very marked in the case of the court. Why? Knowing that assaults involving acquaintances were brought increasingly to the court's attention after 1983 (Table 56), we crossed the variables "age," "connection with assailant," "before/after 1983" and "information." Given the number of missing data, generally, and our relatively limited sample, the results of our calculations do not tell us much. But they do indicate that when the victim and assailant know one another, the latter tends to be older. After 1983, more assaults by persons close to victims were reported to police, and these assaults are almost always brought to the court's attention since the suspect is known.

	BEFORE 1983 %	AFTER 1983 %	TOTAL %
Police files	67	62	65
Court files	62	49	56

Figure 6 **Ages of Victims, Suspects and Defendants**



To conclude on this matter of victims' and assailants' ages, we have compared them in a graph according to categories at the times of assault and trial. A clear similarity emerges (Graph 6) in victim's age categories when they report the assault to police and when they appear in court. In fact, except for the under-18s discussed above, the victim-witness age curve coincides almost exactly with the one for victims at the time of assault.

Such is not the case when it comes to suspects and defendants. In fact, comparison of these groups indicates that after age 25, the percentage of defendants slightly exceeds that of suspects and the gaps later widens until we find defendants clearly overrepresented relative to suspects after age 30 up to 50. The court authorities seem to be less tolerant towards older assailants than they are with the younger ones. The fact that many persons charged with sexual assault have violent records, as we shall see farther on, may account for this.

Defendants' circumstances and occupations

In the 333 (58 per cent) cases for which this information is available, 132 defendants (40 per cent) were living with a spouse. This percentage is slightly higher than the one noted in the police files. It is fairly constant over the years.

Like the police files, the court records do not offer much information about defendants' occupations (data missing in 31 per cent of cases). In almost half the cases, the defendant is not on the job market. He is unemployed, collecting social assistance or, very rarely, studying. In approximately 40 per cent of cases, he does unskilled work. These data vary little from one time period to the other or between the files of one agency and the other.

Table 59 Defendants' Occupations

Occupation	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Jobless (unemployment, social assist., student)	86	39.6	75	41.9	161	40.7
Unskilled work	78	36.0	76	42.4	154	38.9
Skilled trade	41	18.9	23	12.8	64	16.2
Professional	12	5.5	5	2.8	17	4.3
TOTAL	217	100.0	179	100.0	396	100.0

* Missing data: 177.

Alcohol and drug consumption

In over two-thirds of cases, we do not know whether the defendants had taken alcohol or drugs at the time of the offence with which they were charged. Court documents rarely mention this, and researchers often gleaned their information from the police report in the file.

When there is explicit mention of alcohol or drugs (32 per cent of cases), it would seem that eight out of ten defendants consumed them immediately prior to the offence. Research on the police files revealed that one in two suspects seemed to be intoxicated. We may wonder whether defendants were hoping, by stating that they were not in full command of their faculties at the time of the offence, to mitigate the effect of what they had done. This is a mere suggestion, as our information sources are quantitatively and qualitatively unreliable. Since voluntary intoxication is not a valid defence to the charges under study, this might explain the marked variation in this respect between the data from the court and those from the police.

Table 60 **Defendants' alcohol and drug consumption**

Consumption	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Yes	84	80.8	59	74.7	143	78.1
No	20	19.2	20	25.3	40	21.9
TOTAL	104	100.0	79	100.0	183*	100.0

* Missing data: 390.

Defendants' previous records

Almost two-thirds (64 per cent) of those charged with sexual assault and appearing in court from 1981 on had criminal records. We also note a slight increase in these cases since the new legislation came into force. In fact, repeat offenders (61 per cent of all defendants prior to 1983) accounted for 69 per cent of this group in the years following. Should we see this as more rigorous charging? We cannot answer that here, since the opposite is also possible: noncarcerative sentences may lead to increased offences.

Table 61 **Defendants' previous records**

Records	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Yes	144	61.0	125	68.7	269	64.4
No	92	38.9	57	31.3	149	35.6
TOTAL	236	100.0	182	100.0	418	100.0

* Missing data: 155

But what kinds of criminal records are involved? For research purposes, we attempted to isolate three categories of offences: crimes against the person, sexual offences and other crimes. Although these data are found in the court records more commonly than in the police files and are more reliable as well, we were unfortunately not able to secure this information in all cases.

From the information that is available, however, it appears that three quarters of those charged with sexual assault, and who had already had a brush with the justice system, had previous records of offences against the person: offences of a sexual nature (35 per cent) or other types of crimes against the person (40 per cent). In short, when a defendant has a record, there is more chance of this record being in the area of crimes against the person than in other categories of offences.

Some salient points

Almost always male, very often older than their victims, frequently unemployed, welfare recipients or students (40 per cent), most likely unskilled workers (39 per cent) when they do work, sometimes living with a spouse (40 per cent), often (65 per cent) having criminal records and often confessing to alcohol or drug consumption at the time of the offence -- this is our picture of sexual assault defendants overall. According to the information we have, the major difference between suspects apprehended by police and defendants in court is one of age. Whereas the youngest suspects are less often found on the defendants' bench in the courtroom, older ones, often repeat offenders, are more likely to wind up in court since we see a certain overrepresentation of mature assailants in court relative to all those brought in by police.

6.2.3 Judicial proceedings

Using the information collection grid, we attempted to see how proceedings occurred in chronological order, beginning with the complaint to police.

6.2.3.1 Report to police

We had noted from the police files that 81 per cent of offences were reported within 24 hours. Of the cases sent on to the court, however, only 56 per cent had been reported on the day or day after the offence, 24 per cent were reported within 15 days and 19 per cent within 16 days or more. The main explanation for such delays was that victims who know their assailants are slow to inform police of the offence. These cases go to court more often because the suspect's identity is known.

6.2.3.2 The information

Police and court data differ completely here. According to police, the information is usually (62 per cent) filed in the week following the assault. The court tells us that fewer than half of the informations (35 per cent) were recorded within seven days following the offence, with most being filed within a year (63 per cent) and a very few past that time.

6.2.3.3 Initial dispositions

By initial dispositions, we mean the appearance and bail hearing, decisions concerning preventive detention of the defendant and the pro-forma inquiry.

Appearance

A little more than two-thirds of the defendants (N=389) were detained at the time of their first appearance. The bail hearing, which generally takes place at this stage, allowed the conditional release of 164 defendants (42 per cent), usually with guarantees.

Preventive detention

A defendant can be released on bail at any stage in the judicial process, but this decision is almost always made at the very outset of proceedings. On the other hand, an individual who appears while he/she is released cannot be detained unless he/she fails to appear at a court hearing. Based on the data presented in section 3.3.1 (184 defendants released and 164 released on appearance), at least 60 per cent of defendants are expected to be released during most proceedings. In reality, as can be seen in Table 62, this percentage is 67. We see no difference between the two time periods, but must point out that preventive detention was less common during the year 1981.

Table 62 Preventive Detention of Defendants

	BEFORE 1983						AFTER 1983						TOTAL	
Status	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
In detention	39	27.9	49	34.5	88	31.2	52	37.1	49	32.7	101	34.8	189	33.0
Released	101	72.2	93	65.5	194	68.8	88	62.9	101	67.3	189	65.2	383	66.8
TOTAL	140	100.0	142	100.0	282	100.0	140	100.0	150	100.0	290	100.0	572*	100.0

* Missing data: 1

Table 63 Variables Associated with Preventive Detention of the Accused (Source: Gravel, 1985)

OTHER CHARGES

Preventive detention	YES	NO	
Yes	133	104	237
	51.6%	30.3%	
No	125	239	364
	48.4%	69.7%	
	248	343	601
	100%	100%	

USE OF A WEAPON

Preventive detention	YES	NO	
Yes	103	80	183
	57.9%	30.0%	
No	75	187	262
	42.1%	70.0%	
	178	267	445
	100%	70.0%	

Missing data: 156 cases

INJURIES (SEXUAL ASSAULT)

Preventive detention	YES	NO	
Yes	5	28	81
	43.4%	28.0%	
No	69	71	141
	56.6%	72.0%	
	122	100	222
	100%	100%	

Missing data: 129 cases

DEFENDANT'S PREVIOUS RECORD

Preventive detention	YES	NO	
Yes	152	38	190
	53.1%	18.9%	
No	134	163	262
	46.9%	81.1%	
	286	201	297
	100%	100%	

Missing data: 114 cases

In this study, we have not attempted to identify the variables associated with preventive detention. Gravel (1985) had already done so and we reproduce her results in Table 63. According to this author, defendants charged with sexual assault are kept in preventive detention as often as those charged with nonsexual assault, but less often than those charged with attempted murder. In practice, the seriousness of the offence, combined with the defendant's previous record, is what leads a judge to place the defendant in preventative detention to protect society.

6.2.3.4 The pro-forma inquiry

The formal objective of the pro-forma inquiry is to set a trial date. In reality, in the Judicial District of Montreal, it serves at least two other purposes: a) communicating evidence between parties; b) and, consequently, negotiation regarding charges, hearing dates, sentencing, admissions of fact, etc.

Under s. 476 of the Criminal Code, the defendant may forego the preliminary inquiry at this point. At this same time, he may also enter a guilty plea to the charges as laid or to lesser charges. In the latter case, sentence may be pronounced on the spot, thus concluding the proceedings. Table 63 shows results for this stage of proceedings. The year 1981 does not appear in it since at that time the process was still very informal and not recorded in the files.

Table 64 Pro-forma Inquiry Results

Result	BEFORE 1983						AFTER 1983						TOTAL	
	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Guilty plea (bargained or not)	--	--	11	7.7	11	7.7	11	8.2	2	1.7	13	5.2	24	6.1
Charge withdrawn	--	--	2	1.4	2	1.4	--	--	2	1.7	2	0.8	4	1.0
Subpoena for preliminary inquiry	--	--	122	86.0	122	86.0	121	90.2	104	88.1	225	89.3	347	88.1
Committal for trial	--	--	6	4.2	6	42.0	1	0.6	8	6.8	9	3.6	15	3.8
Other (stay of proceedings, etc.)	--	--	1	0.7	1	0.7	1	0.6	2	1.7	3	1.2	4	1.0
TOTAL	--	--	142	100.0	142	100.0	134	100.0	118	100.0	252	100.0	394*	100.0

* Missing data: 179, including 141 cases for the year 1981.

We noted that 88 per cent of defendants underwent a preliminary inquiry. Various theories can be advanced to explain this. Some are purely legal, others more prosaic. From a strictly legal standpoint, the preliminary inquiry provides defence counsel with a chance to check the substance of the crown's evidence and, more particularly, the victim's credibility. On the other hand, this inquiry cannot be foregone without the crown attorney's consent. Our data do not tell us in what percentage of cases the defence's offer was rejected. Moreover, during the period under study, all lawyers in the criminal field, at one time or another, have deliberately used preliminary inquiries as a pressure tactic in their bargaining with the government, a move that clogs the court rolls. The interviews in the next section (Part Three) are more explicit on this topic. In any event, every time that the crown's evidence is not ironclad, the accused is better off going through the slow judicial process. Sexual assault generally takes place without witnesses. Conviction or acquittal may depend solely on the victim's testimony, credible or not, and whether or not she is present at the inquiry or the trial.

In a some instances (seven per cent), the case is settled at the pro-forma inquiry by a guilty plea or withdrawal of the charge. Other and cases (3.8 per cent), and this is more rare, go straight to trial.

6.2.3.5 The preliminary inquiry

At least 47 cases in our sample ended prior to the preliminary inquiry.[5] Of the 526 cases remaining, we know that 82 were sent straight to trial under s. 476 of the Criminal Code, and in 14 cases we do not know whether a preliminary inquiry took place.

At the preliminary inquiry, almost all victims were subpoenaed as witnesses, but only 54 per cent of them actually had to testify.

In 35 per cent of cases, an in camera hearing was requested by one of the parties, almost invariably the crown (85.9 per cent), and was granted, except in 10 cases. Requests for publication bans against the media came from the prosecution in 97 per cent of cases. Eighty-four per cent of these were to protect the victim's anonymity. The court almost always ruled in favour of restrictions on publication.

Few persons testify in the preliminary inquiry, since sexual assault generally occurs without witnesses. The victims are the persons most commonly called and after them, in order, police officers (12 per cent of witnesses), family members (nine per cent) and social health service representatives (four per cent).

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[5] Information was not available for the year 1981.

Table 65 Preliminary Inquiry Results

Result	BEFORE 1983 N	BEFORE 1983 %	AFTER 1983 N	AFTER 1983 %	TOTAL N	TOTAL %
Guilty plea	25	11.4	26	12.4	51	11.9
Discharge	43	19.6	24	11.5	67	15.6
Charge withdrawn	11	5.0	5	2.4	16	3.7
Stay of proceedings	1	0.4	1	0.4	2	0.5
Committal for trial	140	63.9	154	73.7	294	68.7
TOTAL	220	100.0	210	100.0	430*	100.0

* Missing data: 14.

Of the 430 cases reaching the preliminary inquiry stage, 68 per cent proceeded with a committal for trial. Some defendants (12 per cent) pleaded guilty at the preliminary inquiry and 16 per cent were discharged at this stage. Finally, the charge was withdrawn in four per cent of cases. Most of the time, when the charge was withdrawn or when the defendant was discharged, the reason was that the victim refused to testify. In some cases, the investigator's absence from the hearing justifies these decisions or else the prosecution feels that there is insufficient evidence.

Since 1983, preliminary inquiries have been ending with a committal for trial more often than previously. At the same time, discharge is correspondingly less common and fewer charges are being withdrawn.

6.2.3.6 The trial

Based on the preceding tables, we might imagine that 376 cases went to trial; 294 after the preliminary inquiry and 82 at earlier stages in the process. However, our data show 405 cases going to trial. The discrepancy may be accounted for by the fact that we could not tell from some court records at what stage certain decisions had been made.

Cases were settled before trial for the following reasons and at the following times:

	Charge withdrawn or stay of proceedings	Discharge	Guilty Plea	Total
Pro-forma inquiry	6	2	24	32
Preliminary inquiry	18	67	51	136

Thus, we can say that about 30 per cent of cases are settled before trial, and for two main reasons: the defendant pleads guilty or is discharged, usually due to the absence of the victim or another important prosecution witness. It is quite rare for a case to end before trial because of insufficient evidence (only 12 of the 168 cases mentioned this).

Table 66 Type of Trial

Type of trial	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Judge alone	83	92.2	93	86.9	176	89.3
Judge and jury	4	4.4	4	3.7	8	4.1
Magistrate or Provincial Court judge	3	3.3	6	5.6	9	4.6
Summary conviction court	--	--	4	3.7	4	2.0
TOTAL	90	100.0	107	100.0	197	100.0

* Missing data: 4.

In 89 per cent of cases, the defendant elected for trial by a judge alone (Table 66). In fact, as we shall see farther on, since the defendant can still plead guilty at the trial stage, this percentage has been revised in practice. Of the 16 defendants initially choosing trial by judge and jury, half did not change their decision. Trial by judge and jury is thus very unusual. Gravel (1985) had noted the same in nonsexual assault and attempted murder cases.

When the trial itself begins, a number of defendants opt for a guilty plea. In our sample, 44 per cent did so (N=177). Thus, trials took place in only about 56 per cent of the cases reaching this stage in the process. For the purposes of our study, it was also important to see how frequently in camera hearings and publication bans were used.

In camera hearings were granted in at least 97 of these trials. The lack of notations in the file does not automatically mean that such hearings were not requested or granted. Most of the time (80 per cent), hearings were held in camera at the crown's request. When requested, such hearings are rarely refused.

As for requests for publication bans, 77 of these were made to the court and accepted. Their main purpose was to conceal the victim's identity. Publication bans have increased sharply since 1983, tenfold in fact, although the overall frequency is still not very high (seven before and 70 after 1983).

In the cases studied, 618 persons testified: victims (27 per cent), defendants (21 per cent), police (20 per cent), representatives of the medical profession (eight per cent) and other witnesses (23 per cent), mainly called by the crown.

What is the outcome in cases coming to trial? Table 67 addresses this. It shows that the judge, or sometimes the jury, had to decide only 56 per cent of these cases, since the defendants plead guilty in the others. Guilty verdicts account for 23 per cent of the total in cases coming to trial and almost half of the decisions rendered by the court. Taking the guilty pleas and guilty verdicts together, we find that 67 per cent of the cases coming to trial end in conviction. In 20 per cent of cases, the defendant was acquitted. This finding occurs when the judge (or jury) is not convinced beyond a reasonable doubt of the defendant's guilt. An accused may also be discharged at any stage in the process without being consequently held innocent. This was what happened in seven per cent of cases. The vast majority of discharges were prompted by the victim's refusal to testify when the assaulted party's evidence was essential to the prosecution. Finally, charges were withdrawn in 19 cases (five per cent). In all, 32 per cent of trials had outcomes other than conviction or acquittal.

Table 67 Trial Outcome

	BEFORE 1983						AFTER 1983						TOTAL		
Outcome	1981		1982		Total		1984		1985		Total				
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
Guilty plea	36	40.0	48	48.0	84	44.2	41	39.0	42	39.3	83	39.3	167	41.5	44.0
Plea to a lesser and included offence	1	1.1	3	3.0	4	2.1	5	4.8	1	0.9	6	2.8	10	2.5	
Guilty verdict	24	26.7	25	25.0	49	25.8	19	18.1	18	16.8	6	2.8	10	2.5	23.4
Verdict of a lesser and included offence	--	--	3	3.0	3	1.6	4	3.8	1	0.9	5	2.4	8	2.0	
Acquittal	21	23.3	13	13.0	34	17.9	20	19.0	26	24.3	46	21.8	80	20.0	
Acquittal on grounds of insanity	--	--	--	--	--	--	--	--	1	0.9	1	0.5	1	0.2	12.3
Discharge	6	6.7	3	3.0	9	4.7	14	13.3	4	3.7	18	8.5	27	6.7	
Charge withdrawn	2	2.2	4	4.0	6	3.2	1	1.0	12	11.2	13	6.2	19	4.7	
Unfit to stand trial	--	--	1	1.0	1	0.5	--	--	1	0.9	1	0.5	2	0.5	
Stay of proceedings	--	--	--	--	--	--	1	1.0	--	--	1	0.5	1	0.2	
TOTAL	90	100.0	100	100.0	190	100.0	105	100.0	107	100.0	212	100.0	401	100.0	

* Missing data: 4.

The differences between our two time periods are fairly striking, as shown here:

	BEFORE 1983 %	AFTER 1983 %
Guilty pleas	46.3	40.2
Guilty verdicts	27.4	17.7
Acquittals	17.9	
Other		

Before Bill C-127 came into force, convictions were more common (pleas and verdicts): 73.7 per cent as against 57.9 per cent. Since that time, the acquittal rate has risen, but discharges and dropped charges have doubled in number. This was an unexpected result, since sexual assault offences are now easier to prove.

The first explanation that comes to mind is that the offences brought to the court's attention after 1983 have been less serious, thus resulting in fewer convictions. Our data, however, do not support this conclusion (Tables 47, 48, 49). The seriousness of injuries could not, of course, be precisely determined by our inquiry. However, except for cases of confessed assault where the conviction rate seems to have risen, we found no difference between our two time periods in terms of the seriousness of the act. Quite the reverse. Acquittals even seem to be more common when the victim had to be given medical treatment or hospitalized. Gravel (1985) made the same observation. In her study, the factors associated with an acquittal verdict were as follows:

- group assault;
- without weapons;
- injuries requiring medical attention.

Given our money and time limitations, it was impossible to investigate all the variables that might be associated with the changes we found between the two time periods. It should be remembered that the fact that more victims are reporting assaults by persons close to them is probably not unrelated to these results. In addition, Bill C-127 came into force very shortly after the patriation of the Constitution and the proclamation of the Canadian Charter of Rights and Freedoms had given defendants new ways of challenging Crown evidence. Our study could not cover all the variables associated with defendants.

6.2.3.7 Some salient points

Even though our analysis of the court records posed an immense challenge to the researchers, considering the many filters at work in each stage of the process and the fact that the data do not tell us everything, we can nonetheless state that Bill C-127 has brought no real change to judicial proceedings concerned with sexual assault. Cases are coming to trial a little more frequently and publication bans are more common.

On the other hand, though cases are coming to trial or at least reaching this stage more often, more defendants are being acquitted or discharged at the time of trial. It is as if the new legislation had formalized judicial procedures without altering them. The next section will offer some support for this conjecture.

6.2.4 Outcome of the judicial process

We have seen that a certain number of cases are settled at various stages in proceedings prior to trial. Before moving on to the matter of sentencing, let us look at the outcomes for all cases in our sample.

6.2.4.1 The final disposition

As Table 68 indicates, 45 per cent of cases are settled by a guilty plea, almost always to the charge as laid. In 16 per cent of the cases, the defendant was found guilty. This brings the percentage of convictions to 61. Acquittals number 81, or 14 per cent of all cases coming before the court. Finally, in 24 per cent of cases the judicial process has an outcome other than conviction or acquittal, such as withdrawal of the charge, discharge or stay of proceedings.

Our legal interviewees (Part III of this report) saw the outcome of the process differently. They seem to have minimized the number of cases discontinued without a plea or verdict and overestimated the number of guilty pleas.

Table 68 Outcome of the Judicial Process

	BEFORE 1983		AFTER 1983		TOTAL	
	N	%	N	%	N	%
Guilty plea	128	45.2	128	44.1	256	44.7
Guilty verdict	52	18.4	42	14.5	94	16.4
Acquittal	34	12.0	47	11.7	81	14.1
Charge withdrawn	19	6.7	20	6.9	39	6.8
Stay of proceedings	2	0.7	5	1.7	7	1.2
Discharge	47	16.6	47	11.7	94	16.4
Other	1	0.4	1	0.3	2	0.3
TOTAL	283	100.0	290	100.0	573	100.0

When it comes to comparing the two time periods under study, the data in Table 68 provide a partial answer to the questions raised by the various trial outcomes (Table 67). When we look at the judicial process as a whole, and not merely at the trial, the difference between the two periods emerges as much less pronounced. Before 1983, a few more cases were being settled before trial, in particular by discharging the defendant.

6.2.4.2 Reasons for discharge or acquittal

It has often been claimed that the conviction rate for persons charged with sexual assault was low compared with the rate for other kinds of offences. Recent studies (Gravel, 1985; McDonald, 1985) neither confirm nor invalidate this assertion. However, a look at the variables associated with discharge or acquittal may shed some light on the court's decisions.

In discharging the accused, the court seems to be prompted by the victim, generally because she is absent from the hearing and often too by her refusal to cooperate with the prosecution (Table 69). Apprehension about going to court, fear of reprisals, depression? Our data do not point to a conclusion here. Of course, the judge could compel the victim to testify. In a 1984 case in our sample, the judge threatened to penalize the victim if she persisted in refusing to testify and she changed her mind. The victim in a case tried in 1982 was sentenced to a $100 fine for refusing to testify, even though she had notified the crown attorney of her reluctance. Her presumed assailant was discharged at the preliminary inquiry.

Table 69 Reasons for Defendant's Discharge

Reasons	BEFORE 1983 N	AFTER 1983 N	TOTAL N
Victim absent	22	16	38
Prosecution request to withdraw the charge	19	16	35
Insufficient evidence (preliminary inquiry)	3	6	9
Refusal of request for postponement	2	3	5
TOTAL	46	41	87

* Missing data: 7.

Cases of victims being sentenced for refusing to testify seem to have been very rare in the Judicial District of Montreal. Might this opinion by Judge Girouard of the Court of Sessions of the Peace reflect the tolerance of the judiciary?

> " ... a victim's right not to charge and even to be silent should be seen as part of the rights guaranteed by the Charter, which makes it a duty of the courts to protect the image of justice."[6]

As a rule, court records do not tell us the reasons why victims withdraw their cooperation. Therefore, we have attempted to look into the characteristics of the crime, the defendant or the victim that have some connection with discharge. Only one variable seems to be associated with the discharge of an accused: the number of assailants. Discharge is more likely (as is acquittal) when several individuals are charged with the same offence. The victim might feel threatened in such cases or withdraw following the discharge or acquittal of one of the defendants (Giroux et al., 1981). One of the crown attorneys we met also commented that in "gang rape" cases, the victim's credibility was lessened as proceedings went on, with her memory and emotional stability deteriorating through a series of trials.

As for the factors affecting acquittal, we have not managed to identify these clearly in our study. The seriousness of the charge does not seem to come into play here, except when weapons are involved, a situation that almost never ends in an acquittal. Two other factors besides the absence of weapons do seem to be associated with acquittal, i.e., when there are two or more defendants and when the victims are minors. Some circumstances surrounding the offence may possibly influence a decision, for example the scene of the incident or the victim's consumption of drugs or alcohol. The meagreness of our case sample, however, together with the quantity of information missing, would make these possibilities hard to confirm.

6.2.4.3 Guilty pleas

Defendants pleaded guilty at various stages in the process. Since this is the category where we have the greatest number of cases, we have attempted to identify the variables associated with entering a guilty plea. As in the Gravel study (1985), the victim's age seems to be the most decisive factor. Persons charged with sexual assaults on children and adolescents are almost twice as likely to plead guilty as are those charged with assaulting adult victims, and this situation is unchanged over the periods in question.

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[6] "Deux victimes se défilent le même jour et les prévenus sont donc libérés" ("Two victims walk out the same day and the defendants are released"), in La Presse, Montreal, December 2, 1983; p. A 10.

	Victimized Minors		Adult Victims	
Guilty plea	**N**	**%**	**N**	**%**
Yes	170	74.8	56	21.6
No	57	25.2	203	78.4

Accordingly, we may expect a larger number of indecent assaults and common sexual assaults to occur with such pleas, as these offences mainly involve young people. Let us not forget that these same cases also end more frequently with the defendant's discharge or acquittal. In other words, when the charge is not a serious one and the victim is a minor, it is less likely to go to trial, but when it does, the chances of acquittal are greater.

Gravel (1985) also found that the more violent an assault had been, the more likely it was to go to trial.

6.2.4.4 Sentencing

In every instance of a guilty plea or verdict (350 cases in our sample), the judge has to pass sentence. The maximum sentences are already stipulated in the Criminal Code. They also were prior to 1983 (Table 1). In 31 per cent of cases, the judge requested a presentence report.

As we see in Table 70, the sentence was imprisonment in more than half the cases (59 per cent) for the periods listed below for our entire case sample:[7]

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[7] We will not consider sentences associated with second and third counts here. These situations are more numerous.

Table 70 Sentencing on the First* Charge

	BEFORE 1983						AFTER 1983						TOTAL	
Outcome	1981		1982		Total		1984		1985		Total			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Fine	12	15.0	29	29.6	41	23.0	4	5.1	4	5.1	8	5.1	49	14.6
Imprisonment	48	60.0	47	47.9	95	53.4	49	62.1	53	67.9	102	64.9	197	58.8
Probation	20	25.0	20	20.4	40	22.5	25	31.6	21	26.9	46	29.3	86	25.7
Remission of sentence	--	--	2	2.0	2	1.1	1	1.3	--	--	1	0.6	3	0.9
TOTAL	80	100.0	98	99.9	178	100.0	79	100.0	78	99.9	157	99.9	335**	99.7

* We refer to the first charge and not the main charge since, in order to standardize our investigation, we always used the first count relevant to our study appearing on the indictment.

** Missing data: 15 (these may possibly be remissions).

Less than a month	4.4%
1 to 6 months	16.3%
6 to 12 months	10.3%
1 to 2 years	24.6%
2 to 5 years	30.0%
5 to 10 years	10.8%
10 to 15 years	2.5%
15 years and over	0.9%

We can see here that provincial prison sentences account for over half of the cases (56 per cent) and that sentences of 10 years or more are very rare (three per cent).

A fine is imposed in 15 per cent of the cases, and in 40 per cent of these the amount is under $300. Nine defendants had to pay $1,000 or more.

As for probation, this was the sole penalty in one-quarter of cases and a complementary penalty in another quarter. The average length of probation is three years.

Penalties seem to have become more severe since 1983. The use of fines has dropped considerably, while detention sentences have grown more common, though not longer. In noting this, we must keep in mind that the most serious crimes are overrepresented in our sample.

Sentences and the nature of the assault

According to the jurists we met (Part III of the report), the objective seriousness of the offence is one of the main factors in determining the penalty. This seriousness would be assessed mainly on the basis of how severe the injuries inflicted on the victim were and whether a weapon, or some other exaggerated abuse of power, was involved. In addition, the nature of the act (penetration or not) may still influence judges and crown attorneys. We will come back to this later, but pause here to quote a judge's remark that

> "the difference between consummated and un- consummated rape still continues to exist in many people's minds. The psychological effect of penetration is still an important factor."

The data presented in Table 71 support the theory that the more severe sentences go with the more serious charges. As might be expected, this connection (significant to < .001) is much more obvious for the period prior to Bill C-127 than it has been since.

Table 71 Sentences by Type of Sexual Assault*

Sentence	Rape (s. 143)		Indecent assault (s. 149-156)		Sexual assault (s. 246.1)		Sexual assault with a weapon (s. 246.2)		Aggrav. sexual assault (s. 246.3)		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Prison	51	85.0	37	38.5	50	43.5	53	91.4	6	100.0	107	58.8
Other	9	15.0	59	61.4	65	50.5	5	8.6	0	0	138	41.2
TOTAL	60	100.0	96	100.0	115	100.0	58	100.0	6	100.0	335**	100.0

* We have not considered "unlawful sexual intercourse" here.
** Missing data: 15.

Prior to 1983, 85 per cent of defendants who were found guilty of rape were sentenced to imprisonment, while 40 per cent of those convicted of indecent assault were similarly punished. There seems to be a distinct relationship between the seriousness of the act (as defined by the presence or absence of penetration) and the severity of the penalty.

In spite of the legislator's intention, Bill C-127 makes it hard to gauge the seriousness of an offence. For the four years in our study taken together, ordinary sexual assault represented 83 per cent of cases; sexual assault with a weapon, 16 per cent; and aggravated sexual assault less than two per cent (Table 43). In short, virtually all sexual offences are classified without a modifier, unless weapons are involved. Table 71 indicates that prison terms are imposed in 43 per cent of ordinary sexual assault cases and in 91 per cent when the offence is judged as an assault with a weapon.[8] As for aggravated sexual assault, a total of 14 cases were recorded in 1984 and 1985 with 10 of these in our sample. Six of the 10 ended in conviction with a prison sentence in each case.

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[8] We saw earlier that assault committed using a weapon is not necessarily labelled as "assault with a weapon."

Since the legal terminology tells us little about the seriousness of an offence, we must try to round out our information using other indicators of seriousness: the means employed to commit the offence, injuries to the victim, whether or not penetration occurred.

Gravel (1985) brings out a significant relationship between the degree of coercion used and the severity of the eventual sentence (Table 72). It will be seen that the use of weapons influences sentencing considerably. It also happens that prison sentences are given more often when the victim was injured and, presumably, evidence of these injuries was brought to the attention of the court.

Table 72 Sentences Imposed by Coercive Means Employed in Committing the Offence* (1982 and 1984)

Sentence	**None**		**Physical violence**		**Weapon**		**Total**
	N	**%**	**N**	**%**	**N**	**%**	**N**
Prison	17	34.7	52	58.4	26	86.7	95
Other	32	65.3	37	41.6	4	13.3	73
TOTAL	49	100.0	89	100.0	30	100.0	168**

* Source: Gravel (1985)
** Missing data: 55.

Table 73 Sentences Imposed by Presence of Injuries* (1982 and 1984)

Sentence	No		Yes		Total
	N	%	N	%	N
Prison	27	39.7	52	66.7	79
Other	41	60.3	26	33.3	67
TOTAL	68	100.0	78	100.0	146**

* Source: Gravel (1985).

** Missing data: 77.

The crux of the ten-year discussion leading up to the passage of Bill C-127 was the question of how much significance to ascribe to vaginal penetration. Most of the people we interviewed (Part III) touched on this issue, pictured quantitatively in Table 74. It must be realized that this table, given the extensive gaps in our information concerning the nature of the acts committed on victims, can do no more than indicate an avenue for investigation.

Of the 158 cases where penetration is known to have occurred, at least 117 ended with a conviction. And in 80 per cent of cases, the sentence was imprisonment. When vaginal penetration did not occur, prison sentences were half as frequent (38 per cent).

Other factors in determining sentence

The other factors connected with sentencing have not been confirmed for the years 1981 and 1985. Among the 1982 and 1984 cases, we know that 70 per cent of individuals with previous records (N=121) had to serve their sentences in prison, while only one-third of defendants without records were incarcerated. In that sense, we also noted that 87 per cent of the defendants who were kept in preventative detention during judicial proceedings were later sentenced to prison terms.

There is also a relationship, though statistically insignificant, between the extent to which the persons involved in an incident of sexual assault are acquainted and the severity of the sentence. Prison sentences would appear to be lengthier and more common when victims and assailants were strangers to one another.

Finally, alternative sentences to imprisonment seem to be imposed more frequently on assailants who attack minors. These persons also plead guilty most often and also knew their victims. We would have to combine these different variables to distinguish the direction and scope of the influences, which could not be done in this study.

Table 74 Sentences Imposed by Type of Assault

Sentence	Rape*		Other types of assault		Total	
	N	%	N	%	N	%
Prison	94	80.3	74	37.7	168	53.7
Other	23	19.7	122	62.3	145	46.3
TOTAL	117	100.0	196	100.0	313**	100.0

* The term "rape" here mans vaginal penetration.
** Missing data: 37.

6.2.5.4 Some salient points

When we look at the judicial process as a whole, from the initial appearance to the outcome of the trial, very few differences emerge between the periods before and after Bill C-127 came into effect. Though there are more convictions prior to 1983, discharges were more common as well. In fact, more cases end before trial in the first period of our study than in the second.

Since fewer cases now conclude with the discharge of the accused, the withdrawal of the charge or a stay of proceedings, it may be assumed that victims are more determined to go through with the whole process and the court system itself is taking charges of sexual assault more seriously.

We have seen that the seriousness of the charge was a decisive factor in sentencing, especially if we consider the aftereffects suffered by the victim. Even in 1984 and 1985, the "penetration" factor seems to have greatly influenced sentencing. The other significant variables are the defendant's previous record and the victim's age.

6.2.5 Conclusion

In spite of all the problems and uncertainties arising from the quantity of missing data and variables that could not be analyzed within the framework of this study, a number of observations can still be offered regarding the seriousness of the offence and its proof.

Concerning the seriousness of the offence, it came out that the more serious an offence is, the greater the chances are of a charge being laid. Among the factors to use in determining how serious the offence is the ones cited by the legislator in the terms of Bill C-127 must certainly be considered. They include causing bodily harm or using a weapon to coerce a victim. We also, however, distinguish factors connected with the subjective seriousness of the act. Juxtaposing victims' ages with number of convictions and sentences imposed showed that the younger the victims are, the more convictions result (guilty pleas and verdicts combined).

Moreover, victims' ages seem a priori to be a mitigating factor in sentencing. Various influences can be cited to explain this. In the first place, if the offence is objectively not very serious, sentencing will reflect this. Also, the fact of defendant and victim being acquainted can be taken into consideration, especially if the victim indicates that she does not want her assailant severely dealt with.

When it came to the defendants' characteristics, age was seen playing the opposite role. In fact, the older the author of the assault was, the more liable he was to be brought before the court. We also saw that, both before and after Bill C-127 came into force, approximately two-thirds of defendants had records. In 35 per cent of cases, these records included offences of a sexual nature and in 40 per cent of cases, other crimes against the person. Therefore, it is very obvious that the perpetrators of sexual crimes who are brought before the courts are persons of violent behaviour whose personality traits become more pronounced with age.

On the other hand, though the lawmakers wanted to shift the emphasis towards the attack on assault-related aspects of the offence, rather than the nature of the sexual acts themselves, vaginal penetration remains an important factor. In fact, prison sentences were twice as likely when penetration had occurred. Bill C-127 seems to have changed nothing in perceptions of the subjective seriousness of the acts committed.

As for proof of the offence, Bill C-127 brought no change to the situation current in the years immediately before it came into force. Before and after it was passed, we find that the cases heard in the courts more frequently deal with offences committed in the victim's or assailant's home where the parties know one another. In this respect, we were able to distinguish a marked difference between the police files and the ones for prosecution, a difference accounted for by the fact that it is harder for police to solve a crime committed by an unknown individual in a public or unidentifiable location. The victim is also seen to remain the main prosecution witness, with chances of a conviction in her absence virtually nil. In addition, the notable rise in references to alcohol or drug consumption by the victim in court records, as against those of the police, is undoubtedly the result, as our court observations showed us, of defence lawyers trying to attack the victims' credibility and, thus, raise doubts concerning their consent to the sexual acts, or at least the defendant's mistaken belief in this respect.

It would have been interesting indeed to study the progress of these cases from the complaint to police right to the end of the judicial process, and see how the process works. To do this, however, it would have been necessary to triple our police files sample, sifting through over 2,000 police records to find about 500 cases brought before the Court of Sessions of the Peace, as the percentage of indictments was only 30 per cent and a number of these were referred to Youth Court.

PART THREE

ANALYSIS OF QUALITATIVE DATA

7.0 INTERVIEWS WITH POLICE

We began collecting qualitative data by means of interviews with members of the police, legal practitioners, social workers, counsellors and victims. Forty-two interviews were completed. Of these, 41 have been analyzed.

The interviews were partially structured, based on a prepared grid, tape-recorded and then analyzed qualitatively. Our questions dealt with the periods prior to and following the passage of Bill C-127 to the extent, of course, that respondents had experienced the two systems. This initial stage in the qualitative component of our research went on for four months.

A second type of information comes from listening to tapes of a dozen cases heard in the Superior court and the Court of Sessions of the Peace of the Judicial District of Montreal. The data thus collected were entered on a coding grid. The decision to process this information qualitatively is warranted by the nonsystematic nature of the sampling process (we will define the criteria used for case selection farther on), as well as the size of the sample which was actually too small to allow for quantitative generalization. This search was spread over a period of almost three months.

For each of these information sources, we will adhere to the plan already outlined in Part Two of this report: describe our methodological approach and present the data thus obtained.

Following a brief methodological section, we will report and examine the remarks made by members of the legal system, beginning with the police.

7.1 Methodological Approach: Data Collection

We will not dwell on the description of our chosen methodology at this point except to the extent that it stands out from the other qualitative techniques used in the study.

7.1.1 The interview guides

Several kinds of topics were touched on in these interviews.

In a general way, we wanted to know what the Montreal Urban Community Police Department's current policies are for dealing with complaints of sexual assault, the actual way in which these policies are implemented and the perceptions and attitudes of the police force concerning the 1983 reform. More specifically, the questions we asked had to do with the frequency of complaints, the seriousness of cases reported, the typical characteristics of victims, investigation methods, the reasons behind decisions, orders from the authorities, training, orchestration of effort with other legal and paralegal parties involved, and police behaviour when confronting the problem of sexual crime. Two guides were developed to support the interview process.

7.1.2 Choice of interviewees

Our approach was intended to be as comprehensive as possible, given time constraints. Therefore, we expanded the range of our information sources.

We felt it important first to become familiar with the police officers's viewpoints, since it falls to them to establish initial contact with the victims and open an investigation. It was also our duty to meet some of the people who carry out the more complete investigations that may result in court proceedings: the sergeants of detectives.

Choosing police officers for the sample presented substantial problems. The department has about 4,500 officers spread across 24 districts. In order to vary our sample to reflect appropriate criteria, we would have had to weigh the place of work, experience, position held and the sex of the interviewee. This approach -- which would have been highly satisfactory scientifically speaking -- would have called for at least thirty interviews, an impossibility with the resources at our disposal.

Our solution was to limit ourselves to one busy district and there interview police officers with experience in dealing with sexual assault cases. After an initial telephone call, a request along these lines was prepared and then presented to Montreal Urban Community Police Department authorities, who responded quickly.

We rounded off this series of interviews by seeking the opinion of the training director as to the Montreal Urban Community Police Department philosophy in this area, as well as to get accurate information about training programs.

Needless to say, a number of other contacts were made in the course of research, especially with management. These interviews were highly useful, but are not the subjects of in-depth analysis here.

7.1.3 Interviewees chosen

In all, seven interviews were conducted. Unfortunately, one of these could not be used for analysis because the tape recorder was not working properly. For the same reason, we had to reconstruct another from memory.

Of the six interviews used, two were given to us by police officers and three by detectives. One respondent was female.

The majority of our interviewees came from Station 33. This is a district with especially heavy demands because, among other things, a high percentage of its population is transient. Only one of the officers questioned was assigned to Station 44. he had already offered his cooperation at an earlier stage in our research and we knew that he had been frequently called on to deal with complaints of a sexual nature.

These interviewees had from five to 25 years experience in the Montreal police.

The sixth and final interview was granted by the Montreal Urban Community Police Department training director. The present incumbent has been in this position since June, 1987.

7.1.4 Making contact

We had telephoned for an appointment with the training director. The research context was outlined to him at that time.

As for the other respondents, their superiors had more or less put them in the picture as to the reasons for these interviews. At the outset of each interview, we therefore duly identified ourselves and detailed the nature of our research.

7.1.5 The interview process

All interviews took place on police premises.

We gave police officers and detective sergeants this opening background description:

> "In 1983, changes were made in the Criminal Code regarding offences of a sexual nature. We are trying to grasp the impact of these amendments on police activities. In this context, could you describe for us the kind of action you take on complaints of sexual assault and any changes in this respect since you have been on the job?"

The training director received this opening background description:

> "Could you tell us what MUCPD policy is with respect to training police officers who have to deal with victims of sexual assault and identify the impact that the 1983 reform has had on this training policy?"

Interviews varied in length, depending on our interviewees, from 25 minutes to an hour. They were conducted between April 6 and 15, 1988.

7.2 Data collected

In this section, we will present the results of data collection with police. Initially, we will emphasize the handling of complaints. Next, we will outline the training that Montreal Urban Community Police Department peace officers are given with regard to sexual assault. Then, we will identify how interviewees perceive the seriousness and impact of the offence, the training given to police officers and their attitudes towards victims. A final section reports our respondents' overall assessment of Bill C-127 and relays their suggestions for improving the present system.

7.2.1 Handling the complaint

The most recent studies tell us that many victims of sexual offences do not report the incident to police. For example, the Canadian Urban Victimization

Survey (1984) finds a rate of 38 per cent of sexual assaults reported for the seven-city group studied. Montreal has the highest reported percentage, 50.

According to the police officers interviewed, many sexually assaulted persons would not come to the police, but tend to approach other institutions instead. Some victims would hesitate to report the assault because of prejudices that are still very much present in society.

> "I believe that it's still very hard for people who are victims of sexual assault to talk about it, because of taboos, because of all the prejudices. The big prejudice held by society, I think, is: 'She was looking for it.'... It's not taboo to say that she did not try to attract the individual."

Other victims would apparently have guilt feelings to prevent them from reporting such sexual acts.

> "There are victims who are so caught up in a guilt feeling that they're afraid to tell how the assault occurred."

Others interviewed stress that embarrassment may sometimes prevent the person from reporting the assault.

> "Since the lady was extremely embarrassed, she didn't want to deal with the police."

Those who do call the police do so hours, weeks and even months afterwards. It is often someone else who sounds the alarm, with or without the victim's consent.

> "She had never laid a charge. But afterwards she went to hospital, some months later. They assigned her a social worker, and she called us. Thanks to the social worker, we were able to take the complaint."

According to our quantitative data, however, 81 per cent of assaults were reported to police within 24 hours after the offence. We must remember that in nearly half of these cases, it was not the victim who called the police.

7.2.1.1 Response to the initial call

When the police are called on a sexual assault, or on other crimes, the police officer responds to the call. Apparently, there is no special sexual offence detail in the Montreal Urban Community Police Department.

Operational procedures for sexual offences do exist in the police department, however, and here are the main ones:

> "A patrolman answering a call of sexual assault should:
>
> - act calmly and perceptively and comfort the victim;
> - verify the validity of the charge; and
> - avoid asking unnecessary questions, particularly about her sexual history.
> - inform her, if the sexual assault has taken place recently, not to take a bath, vaginal douche or any antibiotics;
> - arrange for the immediate transportation of the victim to one of the institutions listed..."

The June 14, 1986 orders may not be well enough known, since one patrolman told us that, as far as he knew, there were no directives regarding procedures to be followed in these cases.

In fact, police officers, for the most part, do seem to be following the procedures laid down by their senior officers. They tell us in the interviews that their first job is to make the victim feel safe.

> "Let's say we're going to pay more attention because we know there's a fair amount of trauma. And we're going to be more sensitive as well."

Their role also includes collecting the basic information to establish the validity of the sexual assault complaint. As for the details of the incident, however, they only get the general story from the victim, and avoid pressing her for details.

> "Police officers are asked not to make her go over the detailed circumstances of what happened. Going into detail is not essential for the moment; that's a matter for the investigation.... A police officer doesn't traumatize a victim by trying to get her to relive what happened."

Initial police involvement, then, is basically assistance. In terms of transporting a sexually victimized person to hospital, the police officer will attend to getting her there, something he/she does not do in other situations.

> "We'll do some things we wouldn't do on ordinary calls, like giving the lady a ride. Usually we would call an ambulance, depending on how serious the case was, obviously. But in sexual assaults, we accompany the victim to hospital, then after the tests we take her home. We provide transportation."

According to the police officers we met, the majority of sexually assaulted individuals do not object to being driven to the designated hospital by the peace officer. In cases of a victim refusing to go to hospital, the patrolman will attempt to persuade her to go whether or not she wants to lay charges or not. He/she will not, however, take to victim to the hospital against her will.

> "Whether the person wants to lay charges or not, I will explain it all to her; that it would be a good idea for her to go to a hospital to find out if she has contracted venereal disease, if she is having a physical reaction, and that she should get treatment. Then if she wants to, we'll go; but if she doesn't want to, I can't force her."

The police officer, thus, has a role in aiding the victim, or:

> "Making her feel safe, rushing her as quickly as possible to a designated hospital in the area and getting the evidence without delay, that's our job."

Remarks made by investigating officers corroborate what the police officers have to say.

7.2.1.2 The investigation

Based on the assaulted person's story, police officers may conclude that an assault took place. Yet, in practice, they do not have the discretion to reject a charge. All sexual assault charges are taken seriously. If they have doubts about the truth of the facts as stated, police officers will mention them to the investigator.

> "To us, all sexual assault charges have some basis. Obviously, if we get to the scene and it makes no sense, we'll take it anyway, but we'll inform the investigating officer. At our level, we accept all complaints."

The patrolman's involvement is thus limited to getting the victim all the support she needs. As soon as his duties are completed, he/she turns the case over to the investigating officer who decides whether there are grounds to proceed. His/her decision is based on the officer's report, the medical/legal examination, other material evidence and on the victim's desire to see her charge pursued. This investigation will enable police to establish whether the charge is substantiated and may lead to the arrest of a suspect. We saw in Part Two that very few such charges are treated as unfounded when the police investigation begins. The police officers' remarks thus tally with our statistical analysis.

The medical/legal examination

Directives have been issued to the police department regarding the medical/legal kit and its use. Briefly, the police officer is to provide medical staff with the information needed to fill out the forms, inform the doctor if the victim has already told him the story, take possession of the sealed kit, and sign for it after checking whether the victim has signed the consent form. He/she the forwards the kit to the forensic laboratory accompanied by a request for a report, ensuring that all precautions have been taken to avoid damage to evidence. The investigating officer, is advised to see personally to the various confirmations and forwarding the medical/legal kit his or herself.

According to the police officers we spoke with, the kit is forwarded to the forensic laboratory as soon as it is received. In terms of material evidence, most of those interviewed feel that the kit's introduction offers a significant benefit. In their view, evidence is now being collected in a more scientific way.

> "Before, when someone was a victim of sexual assault, police officers did what they could to preserve the evidence. Now, with the medical/legal kit, the emphasis has really been placed on preserving all pieces of material evidence. I think this is of significant benefit in terms of physically dealing with evidence that before was done in a much less orderly way, much less structured."

Yet this police opinion of the medical/legal kit does not seem to be shared by most people who work with it in the hospitals. One of our respondents mentioned having got wind of negative attitudes towards the kit. Note, however, that the reasons advanced by police do not altogether correspond to the arguments used by the hospital workers we spoke to and reported in a later chapter.

> "There are policemen and investigating officers who say that a number of workers in the hospitals are negative about the kit because it makes more work for them. They say that what has been done in this area is not worthwhile enough, that too much is being asked of hospital staff and especially that it makes too much work for them in court. But me personally, I've always had good cooperation."

Cooperation from victims

The victims who talked to our interviewers laid their own charges, but most were pressed to do so by others. The general feeling is that a number of sexual assault victims would not lay charges, no doubt because of embarrassment, fear of their assailants, or a certain uneasiness about the judicial process. We want to make it clear that the police officers we interviewed had not had to deal with sexually assaulted males.

From what interviewees have to say, it emerges that most complainants cooperated with police.

> "Personally, I've had good cooperation from the victim. Probably, the initial approach made by the police won the victim's trust. She probably felt safe and didn't withdraw into herself, then she opened up to the investigation."

According to one police officer, assaulted persons may even take an active part in the investigation. To illustrate his point, he told us about a case where the victim had made a significant contribution to the arrest of her assailant, a total stranger. The conclusion this interviewee drew from his story confirms what other police officers are saying.

> "If all victims cooperated as she did, there would be virtually no sexual assault, or else there would be a lot less of it."

Police attitudes during the investigation

The officer handling the investigation is advised:

"-- to be patient and to create an atmosphere conducive to the collection of information;

-- to be the only one to determine the details and to ask questions about the sexual assault;

-- to be alone with the victim so that she is comfortable and relaxed."

The department's instructions stipulate that the investigating officer cannot meet the victim until after the examinations.

According to what our interviewees had to say, it seems that officers handling investigations follow procedures fairly closely, though without sticking overmuch to the letter.

> "The directives are not there to be followed to the letter. They are there to provide a line or way of approaching the victim."

In this way, the investigator will collect information to establish the material evidence and thus lay charges. He/she will meet the victim at the hospital if she is available. Otherwise, he/she will have her come to the police station. The victim will have to repeat her story, but this time in detail. Regarding a female victim's written statement, one investigator remarked that he would prefer leaving this up to the officer on patrol, if this was a woman. In his view, a trusting atmosphere is more easily established between two women. He will question the victim afterwards to fill in the gaps in information.

When the assailant is a stranger, the victim must view a series of photos, never just one, to identify a suspect.

> "During the time when she has to undergo the examinations, I ask her to try to permeate her subconscious and conscious mind with the visual image of her assailant, since it is fresh in her memory. I ask her to make this effort in addition to going through the examinations to make it easier for her to recognize him in photos in the near future."

Suspect identification from photos still seems to be successful in only 20 per cent of sexual assault cases, a percentage similar to the one for nonsexual assault cases. According to the police officers we spoke with, the trauma experienced from these two criminal acts makes identification a problem. Also, the fact that the photos are not always recent (two to five years), makes positive identification of individuals that much more complicated. Young adults apparently describe their assailants in more detail and are better able to recognize suspects from photos.

> "I had two cases, these were young girls in their twenties who had been assaulted. Their definition of the assailant was much more complete and more detailed."

As far as our interviewees are aware, the Montreal Urban Community Police Department does not use lie detectors for sexual offences to see whether the victim is telling the truth. The lie detector is used solely for serious matters and only when there is no evidence -- and it is the sole resource.

> "There are many other ways than the lie detector to tell whether what she is telling us has some actual basis or not, or if it's the whole truth or not."

Nor did our quantitative research uncover any case where the polygraph was used.

Credibility of the complaint

According to most police officers we met, unfounded charges are rare. They say that almost all sexual assault cases are investigated. The moment a sexual act is committed on a nonconsenting person, an assault occurs.

> "We do investigations and we do them professionally. We don't start out prejudiced. We are going to base the investigation on the data, on the facts, on truths."

Obviously, as our respondents tell us, there are certain criteria for finding a complaint to be valid.

> "Decision-making criteria do in fact exist, as in any type of investigation. When a person reports a fact, the police officer should identify whether there are elements, either in terms of testimony or in terms of material evidence, to confirm that a crime was committed.... We always use the person's testimony, because it is right at the source. On the other hand, in terms of quality of evidence, we will make much more use of what the doctor gives us, and it's the investigating officer who uses this part.... The investigator is going to push to find out if there is enough evidence to lay charges."

And even if certain complainants -- prostitutes, for example -- are sometimes less credible than others, the matter will be investigated just the same.

> "Whether it's a prostitute, whoever it is, if she has been assaulted, personally, I have always taken one point for granted: as soon as someone says 'no' and an act is committed, we have a victim, and so we have an assault."
>
> "We don't have to judge the victim, she can be anyone. It's not the victim we're pointing at. It's a suspect that we have to arrest, then charge."

A complaint of sexual assault from a prostitute may still make no sense but, all the same, the investigators apparently investigate the case, before casting doubt on the complainant.

> "There are people who are in the habit of calling, this has happened to me, because they are victims of sexual assault twice a day, eight times a week.... It's guaranteed that at the outset we're going to investigate and listen to her as we proceed with the investigation.... All the facts put together will be drawn up in a report, then we'll make a notation that we cast doubt on the truth of the statements.... But it is not certain that we're going to discredit her at the outset."

Before the investigation begins, then, very few sexual assault complaints are declared to be unfounded by the Montreal Urban Community Police Department. Instead, the substance of the complaint will be established by the investigation. According to one policeman interviewed, a third of complaints are unfounded, and another third go nowhere for lack of evidence, with only the last third getting to court. His opinion does not reflect our findings from the files, except that it is true that only a third or less of complaints result in an information being brought.

Arresting suspects

In cases where the assailant is someone known to or identified by the victim, police generally arrest him.

> "When the subject is known, the person is arrested, there is an interrogation, there is the evidence to check. At that time, we have to go to the hospital to meet the doctor and make sure that a sexual assault occurred, that the samples have been taken and the paperwork has been handed over to us. At that time, we come back and we start the interrogation, always after giving our accused the right to counsel."

The chances of catching up with a stranger suspected of a sexual crime are slim -- about the same, according to most police officers interviewed, as for other crimes against the person.

So it is that for lack of evidence to lay charges or failure to identify the assailant, few cases get to court. It is apparently often complicated to prove sexual assaults. As was indicated a little earlier, one officer put the chances of a case coming before the courts at 33 per cent. This statement is supported by the statistics (Table 27).

Another respondent shares this perception and, in his view, the chances of identifying a suspect are much slimmer in crimes of sexual assault and robbery than other types of crime.

> "The other cases are much easier to get to court than cases of sexual assault. In a number of sexual assault cases, we got nowhere, just as in cases of robbery."

By contrast, one police officer was a bit less conservative. He would place the solution rate, though without committing himself, at around 60 per cent. According to him, this percentage is comparable to the one for robbery offences. In his view, the material evidence of sexual assault has become more complete with the introduction of the medical/legal kit. In addition, victims of sexual assault are now getting more encouragement to pursue the matter right to the end of the process because they are also getting more support. The percentage of sexual matters coming before the courts is, in his opinion, higher than the percentage of property offences, where the perpetrator is rarely known.

There is no consensus, then, on the solution rate. But there is still agreement that not all complaints that are founded reach the courts.

7.2.1.3 The judicial process

As we have pointed out, not all sexual assault cases come up in court. What happens to victims who do appear in court?

Given their contacts with complainants, investigating officers are involved in ensuring follow-up with them, especially where the judicial process is concerned.

Investigating officer's role

During the investigation, the officer in charge informs the victim of her rights and sometimes corrects her assumptions about the judicial system. The victim will often contact the investigator herself to find out about new developments. In a way, the officer prepares the witness to participate in the judicial process. He/she acquaints her with the procedures that she will have to follow and tells her what might be asked of her.

> "Our part is to prepare our witness for what will be asked of her in court. This is done by meetings with the crown attorney, than with the investigator in the case."

In some cases, the investigating officer will inform the victim of her assailant's release, telling her about the conditions attached to that release. He/she will reassure the complainant, stipulating that she should warn him/her, if she feels threatened.

> "The investigating officer is going to tell the victim: 'If you see or are directly or indirectly aware of any risk, tell us about it.' And we can go as far as arresting the assailant, depending on what happens."

An officer may even have to calm down a complainant who is worried about reprisals by her assailant. He/she will tell her that assailants do not attempt to contact their victims and that there is even less risk if they have been held.

> "I tell her not to worry herself, that in the great majority of cases the person who was the assailant doesn't even want to see his victim again.... The guy who goes inside as a sexual assailant has a hard life behind bars. This individual is not looking for his victim and wants no further contact with her."

Additionally, most investigators assure victims that fewer and fewer defence lawyers will attempt to stain their reputations

> "... to get their client out of the soup."

Hearing that, as a rule, no one will try to undermine their credibility, police tell us that assaulted persons seem calmer.

> "When you give complainants, victims this information, at that point you see them already a little relieved, feeling less pressure."

Police will sometimes refer victims to certain organizations, especially when they are without shelter and resources. As a rule, however, this is left to the hospital workers taking care of the victim.

Briefly, the police role seems to be one of informing complainants, reassuring them and getting them to cooperate with the justice system. They play a support role for victims.

How police see the process and its agents

The interview gave police officers an opportunity to express their opinions concerning the legal process and some of its representatives. This section presents their remarks.

The police officers interviewed are unanimous in saying that the legal process remains painful for victims. In their view, the proceedings become a second victimization for those who have to face it.

> "A victim of sexual assault sometimes becomes a victim of the same assault twice, three or four times."

The most traumatic aspect for complainants, it seems, is having to repeat their stories a number of times. According to most of our respondents, the victim relives her experience every time she has to talk about what she has been through to the doctor, the police officer, during the preliminary inquiry and at the trial. In their view, there undoubtedly should be some way of eliminating a few steps.

> "The painful thing for me is that they are victims of an act and then have to tell the investigator about it, relive it so that we can function and try to find the assailant. They have to relive it when the doctor is asking them questions and relive it once again because they are present in court. And then, when they are present in court, they have to relive it once in the preliminary inquiry and relive it at the trial. So that's five times anyway when the victim has to relive this trauma, which is hard. I think this may be one of the reasons why a lot of women don't want to go through this whole court process."

Also, the consensus is that victimized persons lack information. For this reason, among others, a number of victims never report their assaults. According to our interviewees, the entire should be educated about the phenomenon of crimes with a sexual character. If the legal process were explained, they say, victims of sexual assault would not be so uneasy about going through the courts.

> "I think that it would be good to have information on this subject so that women who are victimized are not afraid of confronting it."

> "I think the information should be a lot stronger, by this I mean disseminated to women by the media, newspapers, magazines. I think there ought to be articles on sexual assault victims.... They say AIDS is an affliction; sexual assault is one too."

With respect to cooperation between police and lawyers, there is a tradition of such cooperation and it proves useful to both parties, according to what police officers interviewed had to say.

According to most interviewees, crown attorneys meet victims in private prior to hearings. The purpose of these meetings is to get the victim's confidence, inform her about procedures, prepare her to testify and explain that she will have painful moments to live through in the course of proceedings.

> "Victims of sexual assault meet the Crown attorneys in private, they give them all the information needed for the case, for preparing the case."

One officer, however, expressed displeasure at the fact that this meeting does not always take place, but understands why.

> "I don't blame the crown prosecutors because they too become victims of the system. They are overloaded, cases are thrown at them, and sometimes they get them at the last minute."

Most police officers we spoke with feel that the crown attorney is the victim's defence, her personal lawyer. As her defender, he/she should get the complainant to realize this and, thus, feel secure. In the same vein, one officer thinks that a female Crown attorney will provide a woman with a better defence because she can get closer to the feelings that person is experiencing.

> "In a number of cases, crown prosecutors are women defending women. They are closer to the woman's feelings, what she has been through. I think emotions can come out more easily, and, also, I think they can supply a better defence."

Respondents also gave us their opinions regarding evidence. Some of them feel that it is currently less complicated to prove a sexual offence since material evidence is handled scientifically. For others, it is still complicated to prove because of the trauma generated by the assault.

As for the evidence brought by defence counsel, our interviewees tell us that it is mainly based on the victim's testimony, not necessarily the victim's prior sexual behaviour.

> "Defence lawyers will likely go with the evidence as brought, the testimony given by the victim. But they will try to save their client, that's for sure."

One officer who was questioned also commented on the sentences imposed on persons guilty of a sexual assault offence. He feels that penalties are sometimes too lenient. This view cannot be generalized, however, as not all officers touched on the subject. The one who did told us:

> "What I disapprove of is that sentences are much more permissive than exemplary."

7.2.1.4 The medical-social network

Montreal Urban Community Police Department directives allow the investigating officer to consult the doctor who examined the victim to get information for legal purposes. The victim's written agreement is needed, however, for the information to be supplied. Medical records cannot be required without the victim's consent or a court order.

Do police officers always follow instructions about the confidentiality of the victim's medical record? At first glance, it seems that this confidentiality can sometimes cause problems, but on the whole police officers seem to comply with the rules.

> "With the hospitals, we sometimes have problems on account of the bloody medical file because of the confidentiality of the medical record. That's been solved, but there were problems, especially in the early years, especially with this Act."

> "With one of my sexual assault victims, I tried to find out what exactly took place at the initial meeting, but no. No information came out of it."

When it comes to social workers and counsellors preparing the victim for going through the court process, most officers questioned considered it useful and satisfactory. However, in the view of some interviewees, there is the risk that therapists may develop too much influence over the complainant, telling her what she should say in court. Others feel that the information is given to sexually assaulted persons too soon after the assault, and that it is too ponderous. According to these respondents, the victim's trauma leaves her unprepared to assimilate everything that she is told. In their view, the victim is bombarded with all this information, which has the effect of creating a mental block, and this reactive behaviour prevents her from pursuing the matter until the judicial process is completed.

> "You've got absolute physical care, absolute psychological care, but as for the justice department or legal activity, we shouldn't even discuss that right now."

On the whole, present relations between police and the main paralegal parties involved seem to be good.

> "I feel that relations are very good right now because there is a need on our part. On their side, they have realized that part of our contact involves assisting the victim, helping people."

Some officers still feel that there is room for improvement in cooperation between the two parties. They mention that with more interaction between police and hospital workers --the first to offer assistance to the sexually assaulted -- on what is being done and what remains to be done, the two groups could work together to improve the victim's lot.

In spite of the points raised by some respondents, there is cooperation between the police and social workers now and, though it could still be improved, on the whole it seems to be good. According to the peace officers we spoke with, much progress has been made from both ends. On one occasion, workers from a CLSC (French acronym for a local community services centre) even provided courses to police officers from the same district on how to assist female victims of violence, an initiative that was much appreciated by police.

One officer interviewed also gave us his opinion on the Round Table on Sexual Assault.

He considers the round table effective. It enables officials from member organizations to discuss problems that arise when dealing with victims. Also, it useful when new procedures are developed.

> "This type of committee exists to make sure
> that projects get follow-up."

It ensures a concerted effort by those involved, since decisions that are reflected in instructions are made by common agreement among those in positions of authority within their organizations.

> "The committee has to be made up of people who are
> representative of the milieu. They have to be people in
> authority who can tell their organization: 'Here it is, we've
> agreed on it, now we have to do it.'"

And in this interviewee's opinion, those meeting at the round table are in a position to put recommendations into effect.

7.2.2 Police training

Montreal Urban Community Police Department police officers' training is delivered first by certain CEGEPs (CEGEP is the French acronym for community colleges offering post-secondary academic courses and vocational training), then by the Nicolet Police Institute and, finally, within the force by the training director. What exactly are peace officers being taught about sexual assault? The following remarks deal with this.

7.2.2.1 Training providers

Provincially, some CEGEPs offer students training in police techniques. For those choosing this avenue, there are courses in victimology.

As for the Nicolet Police Institute, where the student finishes his/her training, we cannot offer any precise opinion on the available courses, since we it was not part of our mandate to get on-the-spot information there. It does appear, however, that dealing with victims is part of what future police officers learn.

On the other hand, in a personal interview, the Montreal Urban Community Police Department's training director provided us with information on courses available to officers, and they form the subject of this section.

There were Montreal Urban Community Police Department procedures on how to deal with victims of sexual assault, but these were developed around the legislation as it was before Bill C-127 came into effect.

Following the amendments in the new legislation, the police department overhauled its policies in 1983. A year after the amendments, in 1984, the department gave a course to all operational personnel on how to apply the new procedures. The training session lasted a half-day and was given by investigating officers and lawyers who dealt with the legal dimension.

In 1986, police officers were given a refresher on marital violence, which is also violence committed on women, but this review did not deal specifically with sexual offences. For the detective sergeants, however, a refresher on sexual assault was among the courses available. Since that time, investigating officers have been taking part in annual study days, and these reviews deal specifically with family violence.

During the interview conducted in April, 1988, the training director told us that in early June of that year, the officers of the youth service would be given training in the area of sexual assaults on children. The message would be delivered by an 11-minute videotape developed by the police institute.

Additionally, the director told us, the Montreal Urban Community Police Department is in the process of developing a retraining plan for the years 1989 and 1990. He could not discuss the content of the forthcoming course, however, as the deadline for presentation of the five-year plan was set for the end of 1988.

> "This is a five-year plan that will afterwards be integrated with the annual objectives. But management decides based on our proposals. We draw up an overall plan, submit it to management in line with an analysis of the needs of the patrolmen and officers. Management accepts the overall plan and includes it yearly with the objectives, which is for 1989, 1990 and onwards."

7.2.2.2 Training content

Police officers were given the training to make them aware of the trauma experienced by victims. This was a new way of dealing with the victimized, the approach was to be more humane, the director tells us.

> "Psychological support to be given to the victim from the first moment by the patrolman and then by the detective sergeant."

Police instructions on sexual assault have been amended. Previously, with a victim of a sexual offence, the police officer handed the case over to the detective sergeant who began his investigation at once. Now, the police officer drives the victim to hospital where she will get medical and psychological treatment first. Only after this does the officer start his investigation.

Now, police officers are not asking victims for specifics any more. They are not looking for the details of the assault to make out their reports. It is the officer in charge of the investigation who undertakes to collect this information. The goal of this policy is to spare victims from having to repeat their stories, which would mean pointlessly reliving the event.

With respect to the medical/legal kit, all police officers know how to use the kit, having been trained to do so.

7.2.2.3 Training assessment

Police questioned have somewhat vague memories of the training they were given. The impression they retain is a little hazy: the meetings were useful, but short and rather superficial.

> "As far as the department is concerned, if I remember correctly, there was a course when the law on sexual assault was changed, we had a course of a few days, or one day, I think. Then there was a little refresher on how to deal with someone who had been assaulted. But as far as the department goes, not many courses have been given on that."

> "We had a course on sexual assault, on how to collect and help fill the kits, on how to get back in contact with the workers and the victims. I think what we got was good, but not enough."

Note that all of our interviewees were aware of the sexual assault problem, even if their training struck them as inadequate. Could it also be that it is not updated often enough?

According to most officers we met, their training would be more complete, if they learned to show their understanding to the victim more effectively, seem a little less serious and severe, and be more open and sensitive.

> "Our objectivity may make us seem much too serious, much too severe for someone who has just been a victim. Maybe we make her withdraw into herself. And maybe we miss information from the victim that she would give us if we were more open and more sensitive... perhaps... but there are a lot of 'ifs.'"

From the statements of the officer we met, it becomes clear that more training would be welcomed. Even though they have an awareness of the trauma felt by victims of sexual assault, most feel that their involvement could still be improved.

> "These are situations, I think, where our actions should be focused much more on feelings and understanding than on objectivity."

7.2.3 Police opinions and attitudes towards victims

The comments reported in this section raise a question: to what extent have Montreal Urban Community Police Department officers abandoned certain prejudices about the "guilty" victim? At first glance, great progress seems to have been made. Among those interviewed, we found no a-priori negative attitude; quite the reverse. The following sections report respondents' views regarding the nature of the crime and its impact on the victim, as well as their attitudes towards her.

7.2.3.1 Police views of the seriousness of the offence

Are sexual offences perceived as being major? In fact, police feel that this is a crime against the person and, in their view, serious because it violates a being's innermost privacy.

Impact of the assault on the victim

It is hardly surprising that a great number of criminal acts have no after-effects. What impact does sexual assault have on the victim? All police officers questioned were unanimous that victims suffer trauma, since every one they have dealt with, right after the crime, was in shock. Victimized persons' distress, however, seemed to vary, according to the scale of violence involved. In spite of their condition at the time of the assault, some victims manage to overcome trauma better than others.

> "There is a state of shock after the assault and, depending on the individual, it is more or less strong. Like the last one, for example: she went through shock, probably as much as the others, but she overcame it better than a lot of women."

The general opinion is that everyone who is sexually assaulted experiences trauma as a result. According to one police officer, the experience of sexual assault traumatizes young victims even more than older people.

> "It may be a little less complicated for some people than for a girl just starting out in life who is assaulted. She may tell herself that it's a stain she will have to carry all her life. She will need help much more."

Comparison with other crimes

Some officers questioned compared the impact of sexual assault on a victim to the impact of other offences: property offences and crimes against the person.

Regarding stress caused by a property offence, opinion seems divided. On the one hand, people who are victims of such an offence are thought to feel no trauma.

> "In crimes like breaking and entering or a very common theft, from a vehicle for example, people don't have stress, don't experience stress..."

On the other hand, breaking and entering is seen as fairly traumatic for the victim. One respondent finds the stress felt in such a situation comparable to that experienced in a robbery, but still less than is felt in a sexual assault.

> "It's traumatic to have your home looted. I think that the victim is just as traumatized and I think she demands as much care as a robbery victim. But sexual assault, I think that in these cases, there has to be special treatment."

Finally, in the view of other police officers, sexual assault is a crime against the person and the trauma it causes is similar to that resulting from a robbery.

> "Robbery is a major crime, I think, in the same sense as sexual assault because people experience them in a state of trauma, of acute stress, in a state of panic because they are confronting the assailant."

It emerges from our work that the police we consulted have trouble deciding about the relative seriousness of crimes. This is understandable. Does sexual touching have more impact on a person than the threat to her life in an armed robbery? When it comes to police action, however, opinion is unanimous: a different approach is needed for the victim of sexual assault, because she is living through the situation in a state of acute stress and great panic. In fact, according to our interviewees, awareness of real trauma is the prerequisite for concerted and effective police action. In their view, sexual assault violates the intimate, interior, innermost character of the person. We now seem to have placed the emphasis on a more humane approach to victims of sexual offences and on better support for them, precisely because of the trauma that they are going through.

7.2.3.2 Opinions on the role of policewomen

Policewomen do not seem to be very numerous in the Montreal Urban Community Police Department. In fact, the department apparently employs about 250 policewomen on patrol duty in a total force of 4,300. What is more, there is no woman investigating officer. [1] These figures are put forward with much reservation, but as they were given to us by a member of the command, they may be assumed to correspond fairly closely to the reality.

It is preferable to have policewomen involved in sexual assault cases? On this point, the opinions voiced are divided. Some interviewees feel that involvement by a female would be more reassuring for a victim. She would undoubtedly feel more at ease telling her story to another woman. Note that the victims dealt with by the police officers we questioned were women and children.

However, while not opposed to the idea of having policewomen involved in investigations, one respondent showed a little scepticism.

> "Certainly, when we carry out the investigation and ask about the circumstances, we surely do not get all the victim's thinking. We only get the basics. What she is really thinking, inside, deep down... she won't bring out. Will she do so if the police officer is the same sex as herself?"

On the other hand, there are interviewees who do not see the relevance of female involvement. One of them commented that in his view women do not always show tenderness towards one another and in fact, he does not believe that a policewoman has any more to contribute to a victim than her male colleague.

7.2.3.3 General attitudes towards sexual assault victims

The police officers we met seem aware of the impact of the crime on the victim. But how credible do they see her as being? Do they consider her as the author of her own misfortune? The comments we gathered indicate that police officers tend to support the opinion that anyone at all can be a victim.

> "Just because it happened to her is no reason for her to hate herself for years and years. That's how it goes sometimes. Women take it out on themselves for years. It can happen to anybody."

> "Any number of women are victims of assault and don't talk about it, keep it quiet, never say that they have been victims of sexual assault. The thought that people may believe that they did something to invite assault makes them not say anything. I think it would be good to have information on this subject so that women who are victims are not afraid to face up to it."

> "I am open about it. I have no prejudices, at least I don't think I have. I'm open and try to be objective."

In short, the police officers we spoke to do not feel that a sexual assault victim is the author of her own misfortune. In their view, sexually victimized persons were not trying to attract or arouse their assailants. Anyone at all can be assaulted, even a married woman, our interviewees tell us. They do not feel that sexual offences can be explained by victims' provocativeness. Moreover, the risks of being the target of such an assault are totally unconnected with anyone's personality. Finally, police officers are not attempting to explain why offences of a sexual nature occur, but they do recognize their existence and confess their powerlessness to control the problem.

> "Sexual assaults cannot be prevented. They will always happen, since we will never be able to stop them."

Even though doing away altogether with criminal acts of a sexual nature is an impossibility, police officers feel that there must be a way of preventing them. In the paragraphs below, we will present their suggested solutions for achieving a degree of prevention.

7.2.4 Overall evaluation and suggestions

The police officers we met with seem satisfied with Bill C-127, at least in terms of the principles the principles it reflects and certain approaches to its application. They are not in a position, however, to assess its tangible impacts, but they did let us have their impressions of the changes they have noted over the past few years. These changes are not necessarily the result of the new legislation. They also voiced suggestions for improving the current system.

7.2.4.1 Changes noted

Our respondents' opinions concerning any growth or reduction in sexual assault complaints to police seem to be divided. In the opinion of some, the complaints level is currently higher than it has ever been. Others find it lower than in the years preceding Bill C-127. Still others had no opinion.

Police officers who feel that complaints have become more numerous in recent years attribute the rise to a public that is better informed and more aware of the sexual offence phenomenon. Other officers are more inclined to think that the complaints level is falling because of a reduction in the number of spurious charges laid by prostitutes who do not get paid. The only point on which there is consensus is that a number of victims are not reporting assaults to police and, what is more, never speak about them.

In spite of the emphasis being shifted from the sexual aspects of the offence to the assault-related aspects, the officers we interviewed have not had to deal with sexually assaulted adult males and have not come across women suspected of sexual assault. This aspect of the legislative amendments has apparently added nothing to the number of complaints.

> "Men complaining of being assaulted by women, in my view, are very rare. Even though the offence has been desexualized, I don't think male liberation has gone that far.... A man who gets sexually assaulted by another man, that could happen... but a man sexually assaulted by a woman? There have certainly been cases of this, but I don't think desexu-alization has had a significant effect."

On the other hand, officers recognize that with the amendments to the Code, the emphasis is placed on a more humane approach to victims. There is greater concern for the feelings of the assaulted party. The current approach is better in this respect than the old one which, our interviewees feel, could sometimes be traumatic for victims of sexual assault. Attitudes have greatly changed for the better. If offences of a sexual nature were formerly not always seen as serious offences, such seems no longer to be the case today.

> "If I go back a few years, the party who was the victim was nothing.... It was very often taken as a joke by some policemen. Even when the individual was going through a terrible trauma, police would almost make fun of that person... because of lack of education, also lack of information.... The way victims were dealt with was much more traumatizing than it is today. The department's approach is different, much more based on understanding and the trauma being experienced by the victim."

Because police are now treating sexually assaulted persons better, relations between victims and peace officers are apparently much improved. From initial contact, an atmosphere of confidence develops between the two parties, as victims feel more secure.

On the whole, it appears that police attitudes towards victims have changed for the better. Most of those interviewed, however, feel that shortcomings may remain, and they are aware of them.

> "A lot of ground has been covered, but there is still some way to go.... I am not going to claim that it's satisfactory, that there's nothing more to be done. There is still something to be done..."

> "I think that this development was absolutely basic. It has happened, it is good, but there is still room for improvement, there is always room for improvement..."

Coming to the courts, officers interviewed have seen a certain change in attitudes there as well. They say that the old views of sexual assault resulted in most victims being roughly handled in court, and if the person could not demonstrate an excellent reputation, she was dealt with even more harshly. At present, the court system is less severe on victims, but it is still painful just the same.

> "Back then, the courts took a sexual assault and tried to bring out all the victim's negative points. The party who had been a victim had to be irreproachable. Whereas today, we don't have to take her reputation into account any more, but look at the trauma experienced in the assault. We no longer judge on reputation."

> "Nowadays, the system is not as rough as before, because we don't have to try the victim before we try the accused. It's much more flexible."

As for victim aid services, they have apparently achieved some rapprochement with police. Formerly, most medical, social workers and counsellors wanted no contact with what might strike them as repressive, especially police forces, our respondents stress. At present, they feel that relations between police and these paralegal workers have perceptibly improved.

> "There used to be a bit of a strained attitude shown towards police, but I think that sense of strain has toned down a lot today.... A lot of ground has been covered. Perhaps there are still things to be done, but in my view a lot of ground has been covered in the last few years."

On the whole, the systems are apparently responding fairly well at present. The treatment of victims is open to improvement, however. Interviewees voiced a variety of suggestions in this regard, and they are presented in this section. They do not, however, involve in-depth reforms.

7.2.4.2 Suggestions

All police officers we questioned recognized the appropriateness of training in the area of sexual assault. What they had been given seemed to them to be good, but insufficient. They think that the government should offer updates, among other things, of its training in communicating with the victim.

> "I think that in this area, we have not been given enough information. Policemen, who are the first workers involved, are always told to try to reassure the victim, try to get her confidence, try to recover whatever evidence there is. But I think that we have not made enough of an approach on feelings.... We should be able to adjust to every situation. I think that we could get other training that might be helpful."

Some officers think that they should be able to give the assaulted persons some follow-up. When a police officer is called in, he/she would assist the victim personally for as long as needed, even if his shift is over.

> "I you could follow the person until she is with the investigators and stay with her... if I feel all right about it, why wouldn't I stay? I think that the victim would have contact with me and she would have confidence. So it would be a lot easier for her."

As previously mentioned, the police officers we interviewed think that the way courts deal with victims is painful for victims of sexual assault. In their view, there are ways of softening the process. Some of our respondents suggest eliminating the victim's testimony in the preliminary inquiry.

> "I think that the notes of the investigating officer and the written statement by the witness should be reproduced in evidence to be sent to the trial. This would avoid a trauma, and she would not have to divulge the evidence to the court until the trial. So she could jump one step."

Even though we cannot prevent all sexual assaults from occurring, it is still possible to reduce their number. For prevention, interviewees suggested a public awareness effort; promote parental responsibility and give child sexual education.

Almost all these suggestions focus on information. Even though people are generally more aware of the sexual offence phenomenon, most policemen we spoke to feel that it is rare for citizens to be properly informed on the impact of such an attack.

> "There has been some opening up in these last few years, but a real information drive is needed in this area for people to be informed, for children to be informed, then for there to be discussion. At that point, we may have fewer assaults. Things will be more open and the victims will be talking about it, they are going to report their assailants. So these assailants will be found guilty and taken out of circulation. If the assailants see themselves convicted every time they do a sexual assault, there will be a preventative impact. Maybe this will mean that it will be reduced> Not that we're going to eliminate the problem, but there will be less of it, I think."

Furthermore, our interviewees feel that parents should be made to recognize their responsibility. Some take the view that sexuality is still a taboo subject for most couples and, therefore, they never discuss problems of a sexual nature with their children. If parents assumed their responsibility by informing their children, the children might be in a position to avoid sexual assault happening to them.

> "There is a whole education to be changed in parents. I think that not all couples speak openly about it.... They have a lot of problems communicating on what has to do with sexual assault and sexual problems.... There is an education that should be done over again in that area, I see a big problem."

In addition to being delivered by parents, some respondents feel the child's sexual education should be rounded out by courses given in the schools.

> "I think that sexual education should be more thorough at the secondary level."

One person questioned considers that it is absolutely basic for all adolescents, boys and girls, to be informed about the problem of sexual assault, and takes the view that the information could be provided as early as Secondary III (Ninth Grade). In this way, students would be taught about the long-term after-effects of a sexual assault, and they would be told what immediate trauma the victim may suffer.

> "They should be informed about the circumstances, the after-effects of what happens and the trauma that exists, one as much as the other. There is a reason why boys assault, and there is a reason why the girl wants to hide it. That's what should be brought out... it's an enormous problem."

They believe, in fact, that young people are not well enough informed about the problem of sexual assault since everything to do with sexuality is still taboo. According to our interviewees, this is an area that cries out to be demystified, as:

> "You even see them in secondary schools, among students, sexual assaults. They may not go as far as the complete act, but they are actual assaults and they are never reported."

Most policemen feel that court proceedings remain difficult for victims because, among other things, they are uninformed about the judicial process. The officers in charge of the investigation consider their role as one of assisting and preparing the complainant to cooperate with the justice system. Most of them, however, conceive their role as complementing that of the crown attorney, whose duties include briefing victims.

> "The crown attorney is not familiar with the case. He knows that it is a sexual assault, but at what level? He doesn't know. Then he tells the investigating officer: 'Go see your complainant, get her confidence and explain the court system fully to her.' This is part of my role, true, but the other big part is his own role."

Finally, the suggestion was made to reserve some court rooms exclusively for sexual assault cases, which would lessen sexually assaulted persons' anxiety about being called before the court.

> "A preliminary inquiry assigned to a court where there is a big crowd, that's not normal. I don't know a woman who is going to tell what happened in front of everybody; I don't know a man either, if that happened to him. So let's have reserved courts, at least for the preliminary inquiries and trials."

In short, the policemen we questioned indicated certain shortcomings in society as well as in the justice system, and they suggested some ways of correcting them.

7.2.5 Conclusion

Only seven police officers were met in formal interviews. These officers had been hand-picked, by ourselves, on the one hand, so that they would meet our criteria for variety, and, one the other hand, -- except for the training director -- by the command of the district selected. Consequently, it is not surprising to find that these officers are informed about, aware of and obedient to the department's directives.

To a large extent, the police opinions tally with the observations we collected elsewhere, in the files, in interviews, and in the literature. These observations include: rife nonreporting, victim hesitation to report, infrequency of complaints deemed unfounded by police, difficulties for victims getting through the judicial system, low percentage of solved cases when the assailant is unknown to the victim.

The police officers we met feel that one of their roles is to stay with the victim throughout the judicial process, though in cooperation with the crown attorney and the medical and social services workers. In their view, however, neither the training given to them, nor the role assigned to them by the department, enables them to do this effectively. In addition, they say that the crown attorney should lend them more assistance in their role with the victim.

Has Bill C-127 brought about changes? Although they are unanimous in saying that the lot of sexual assault victims has improved considerably during recent years, as has the quality of police involvement, our interviewees could not discern a clear relationship between the new legislation and the actual changes. They take the view that the law's stress on the assault-related, rather than the sexual aspect, of the offence has had no detectable result. In terms of evidence, the police refer mainly to the medical/legal kit as a useful tool in investigation, though the kit's development and use in Quebec is not a direct consequence of Bill C-127. Let it be said that all the police officers said that they approved of Bill C-127 as a step in the right direction.

Other improvements emerging over recent years apparently have to do with more harmonious relations between police and the other interested parties in the judicial system, health services and victim aid centres. Cooperation with doctors is apparently still a problem, however. The increased presence of policewomen is also seen as promising.

Finally, the suggestions that were voiced are summed up under four headings:

- prevention, using information to the public and education by parents and teachers;

- orchestration of resources, particularly with the crown attorney;

- police training;

- facilitation of the collection and presentation of evidence.

8.0 INTERVIEWS WITH JURISTS

8.1 Methodological Approach

As in the chapter analyzing interviews with police, the following pages will feature only the special characteristics of the qualitative methods used in this part of our research.

8.1.1 Interview guides

The aim of our exchanges with jurists was to identify procedures, practices and policies applied in the judicial handling of sexual assault charges, along with the lawyers' and judges' views concerning the provisions in Bill C-127. We, therefore, questioned respondents about the incidence of information brought, the seriousness and nature of charges, the characteristics of the parties to the offence, an assessment of the effect of certain amendments (especially those dealing with the new offence categories: consent, proceedings between spouses, the rules of evidence, in-camera hearings and publication bans), the medical/legal kit, convictions, guilty pleas, sentencing, the victim's statement, appeals, training given to jurists, coordination of activities between the various participant groups, etc.

8.1.2 Choice of interviewees

Having opted for a qualitative approach, we developed selection criteria based, not on statistical representativeness, but on diversity of experience and position. Since conducting interviews and analyzing them in depth require a considerable span of time, we agreed that the number of interviews should be limited but that quality was absolutely essential.

We settled on fifteen as the number of jurists to be met. It was essential to become acquainted with the viewpoints of women as well as men. Actual experience in handling sexual assault cases was, obviously, the prime selection criterion.

Moreover, we wanted to present a varied range of representatives of the judicial community. Consequently, we stressed diversity in our work. As a result, our researchers contacted crown attorneys, defence counsel (practising in Legal Aid or privately) and judges from the Court of Sessions of the Peace and the Superior court.

Some familiarity with the judicial community, coupled with recommendations from a few legal practitioners, allowed us to identify our candidates. Most of the jurists that we contacted responded favourably to our request, in spite of often overloaded work schedules.

8.1.3 Interviewees chosen

We obtained comments from a judge sitting on the Superior court, four judges from the Court of Sessions of the Peace, five crown attorneys and as many defence lawyers (of whom two worked for legal aid). Seven of our respondents were female.

All jurists chosen had been practising their profession for at least five years, and most of them for more than ten. Each had relevant experience in the sexual assault area, though its extensiveness varied with the interviewee's status. The crown attorneys we questioned, for example, revealed that they had built up a certain expertise in this area since such cases came to them almost automatically. As a result, they put the percentage of their practice spent in this area at 80 or 88 per cent, except for one crown attorney who put it at 40 per cent. The judges' situations are very different, since no court is reserved for proceedings of a sexual nature. This was also true of defence lawyers, who are compelled by the requirements of their profession to remain generalists in criminal law.

8.1.4 Initial contact

The jurists were contacted directly by telephone. The researchers gave interviewees a concise outline of our study and its objectives, and a meeting was then arranged.

8.1.5 Interview structure

Interviews sometimes took place in our offices, but more often in the offices of our respondents. After the customary introductions and added clarification about the research project, each respondent was given a standard starting situational question:

> "As you know, Bill C-127 abolished certain offences of a sexual nature and created others with different characteristics. Some rules of evidence have also been amended, namely the principles governing the recent

> complaint, the warning in the absence of corroboration and the complainant's sexual behaviour. Have these amendments had definite results? How have they influenced the conduct of hearings?"

As can be seen in this statement, our question tended to point in a certain direction.

Interviews lasted from 30 minutes to an hour. They were spread over a four-week period during the months of February and March, 1988. They were all tape-recorded.

8.2 Data Collected

The task, then, was to evaluate the judicial handling of sexual offences since Bill C-127 came into effect. The subject is a complex one and could be approached from various viewpoints. In this chapter, we have elected to look at the most specific influences of the reform on the practices of the small number of judges and lawyers interviewed. For this reason, we were careful not to go off on highly technical legal tangents and to focus more on actual commonplace experience in the court rooms, court house corridors and practitioners' offices. In this respect, the interviews are valuable in that they provide information about which a strictly book-based acquaintance with the law would limit us to conjecture.

We have broken down and analyzed our interviewees' statements to follow the chronological process of a criminal case: the charge, the case taken over by crown and defence counsel, the hearing, and the outcome of the judicial process. We will also slip in a few words on the training that jurists receive in this area and conclude with a synthesis of our respondents' criticisms and recommendations.

8.2.1 The charge

It would be dangerous and even presumptuous at this stage to attempt a sketch of the typical profile of the complainant or defendant involved in a sexual crime. In the view of our interviewees, however, certain constants emerge with respect to characteristics that can be attributed to either person involved in an incident. We report these below.

We will also place before readers the thoughts of the jurists interviewed as to the nature and seriousness of the events that produce judicial proceedings in sexual matters.

Finally, we will focus on the variation in the numbers of these charges over the years and, in particular, the factors conditioning this fluctuation.

8.2.1.1 Those involved in an incident

To promote some degree of consistency in our presentation, we will deal with the characteristics of the parties to the offence and also with the potential influence of these characteristics on the judicial handling of the charge.

Sex

We know that the 1983 reform did away with the idea of gender that was formerly associated with the involvement of the defendant and complainant. Without criticizing the soundness of this amendment, however, all our respondents agreed on its lack of real impact on their own practices.

In fact, we were told that the overwhelming majority of those laying charges of sexual assault are women. The few male complainants are almost exclusively minors.

On the other hand, they added, it is very rare for women to be charged with such a crime, and when they are it is usually for some form of complicity -- a charge that was also admissible under the old wording of the Criminal Code.

This situation, our jurists pointed out, simply reflects a certain physiological and social reality.

> "The people who are assaulted are the weaker ones: children or women (they are physically less strong) or men who are sick or paralysed... it's always the weakest who get hit."
>
> "It's a guy's crime, that one.... Sexual assault by a woman is very, very unusual. It's not a woman's crime."

One woman crown attorney, on the other hand, considers that many more men or boys are victims of such abuses than the court records would reveal.

Men's reluctance to set the judicial process in motion would be due to embarrassment, their qualms about being ridiculed and not believed. Although these concerns are shared by female victims, they would be exacerbated in men. The fact is that their victimization would be incompatible with the male stereotypes current in society.

Are these qualms about our legal system on the part of male victims completely groundless? We may well doubt it in view of how very lightly the matter was treated by a number of respondents.

> "I heard that a colleague had a case like that (i.e., a woman charged with sexually assaulting a man) and I heard about it because the facts were so funny that everybody was splitting their sides laughing."

Age

Though respondents have not seen any real gender shift in the population involved in sexual assaults during the last five years, some have noted a perceptible increase in their cases involving complainants under age 18. Here again, Bill C-127 is not singled out as the prime factor. Instead, it is attributed to a number of factors, including the publicity these offences are now getting, awareness campaigns in schools and, in particular, the repeal of the Juvenile Delinquents Act in 1984.[1] Indeed, s. 33[2] of this Act outlawed the activities of anyone contributing to the delinquency of a child. This provision covered a great range of offences. Accordingly, a number of cases of sexual abuse committed against minors were sent to Youth Court. These assaults are now almost automatically prosecuted in the Court of Sessions of the Peace. According to one crown attorney interviewed, the volume of these cases has had at least one irritating result: the judiciary apparently tend to minimize the seriousness of so seemingly widespread a crime.

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[1] R.S.C. 1970, ch. J-3, repealed by the Young Offenders Act, S.C. 1980-81-82-83; ch. 110.

[2] Para (1) of s. 33 read as follows: "33 (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully, (a) aids, causes, abets or connives at the commission by a child of a delinquency, or (b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent, is liable on summary conviction before a juvenile court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years, or to both."

Does this mean that even a child's credibility is hard to establish in the courts? We were unable to find any consensus on this matter in our analysis of the jurists' comments.

Yet our quantitative study of the records revealed that minors were being assaulted chiefly by members of their own families or circle of acquaintances. When assaults involve someone who is known, we find more charges dropped, guilty pleas and discharges.

Some interviewees stated that judges were more guarded in assessing the truthfulness of children's testimony. The argument in favour of this approach is apparently young people's immense capacity for story-telling and invention.[3]

Other jurists, though fewer in number, refuse to generalize. They take the view that a witness's credibility depends on a number of factors and every case is unique.

Social standing

It was also important for us to know whether the parties' social standing or professions influenced the handling of the charge in one way or another.

In this regard, respondents first confirmed that in the area of sexual assault, complainants from so-called privileged backgrounds were the exception. Would the well-off be less likely to be sexual victims? In the view of one crown representative, this suggestion needs to be clarified.

First, the lifestyles of certain people unquestionably expose them less than others to this type of crime.

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[3] We must add, however, that since Bill C-15 came into effect in January, 1988, corroboration is no longer required for an individual to be found guilty of a sexual offence on the testimony of a minor.

> "If you stay somewhere where you have just a little lock on your door and anyone can break in, you have a good chance of being abused. And if you're staying with a motorcycle gang, there's another a good chance that you'll have a problem. (On the other hand,) it's a sure thing that if you are in an apartment block with cameras everywhere and attendants at the door, it would be surprising indeed if you were the victim of a break and enter and got abused."

Secondly, if these people who may be presumed to be less at risk are assaulted, they may very possibly be less inclined to lay charges -- perhaps to protect their image and perhaps also because taboos are more rooted in certain circles...

This having been said, most parties involved hold the view that a complainant's social standing is a factor in the hearing, even if its influence is only indirect. One crown attorney believes that there is always the risk of a victim with the intellectual and financial resources "pushing" the case more. She could hire a lawyer and put pressure on the police and the crown, for example. Finally, however, it is the complainant's performance in the court room (the ease with which she testifies and tells the story convincingly, her style of dress ...) that has the greatest impact on judge and jury. Though valid, this statement is unreliable since most victims are never called to testify.

The influence of the defendant's social standing on his credibility in the hearing is, we are told, of little significance. At the very most, the well-off defendant can hire a "super-lawyer" to defend him, and this lawyer will do everything legal to get his client acquitted. On the other hand, the percentage of defendants coming from the higher social strata is apparently very small. This view is confirmed by the statistical data presented in Part Two. As we will see in Section 11.0 of this part, however, one of our woman interviewees felt diminished in court by her assailant's social class.

The victim-defendant connection

One defence counsel stressed that in most reported cases of sexual assault, the presumed victim knows her assailant. They were friends or neighbours, had met in a bar, etc. As well, we were told of a resurgence in sexual abuse within families that is also supported by our examination of the records.

In spite of the abolition of the husband's immunity in such cases, however, legal practitioners rarely see husband and wife confront one another in court.

A number of them suspect that the actual incidence of sexual assault between spouses greatly exceeds the numbers reported. On the other hand, the use of sexual coercion in a couple often occurs in a more general context of marital violence, and the charges would deal more with general assault.[4]

In any event, the small number of cases dealing with sexual assault within marriage that our interviewees brought up were almost all concerned with individuals who were, in fact, separated, whether legally or not, and most situations reported were clear cases of abuse where the victim's refusal of consent was in not in any doubt whatsoever. A judge of the Court of Sessions of the Peace who deals with an impressive volume of cases every year, sitting as he does in this court's practice division, gave us the following description of a typical scenario for sexual assault between spouses resulting in court proceedings:

> "This is the man who has been separated for six months, a year, who, usually under the influence of drink or otherwise, breaks into the house and commits an assault on his wife."

One may wonder how somewhat more "marginal" assaults would be judged: the ones involving married people cohabiting at the time of the offence, for example, and those committed without the use of violence. In the latter case, one defence counsel claims that the courts are fairly lenient. This particular lawyer has twice had occasion to represent persons charged with having had sexual intercourse with their nonconsenting spouses. Though found guilty, the assailants received suspended sentences, mainly because they had not used physical force.

> "This is a somewhat symbolic conviction. If violence had occurred, the sentence would have been more for violence. But the sexual aspect does not apply with a husband."

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[4] CrC s. 245 ff.

Incidentally, let it be said that the crown acknowledged paying special attention to cases of sexual abuse between spouses.[5] Before agreeing to a victim's request to withdraw a charge, a series of factors are considered: the seriousness of the act, the frequency of assaults, the presence of children, etc. Moreover, one woman crown attorney waxed highly enthusiastic about the value of the amendment encouraging these prosecutions:

> "That reform has been so good because there are so many people who live separately without being divorced, who are still husband and wife but don't live together any more, or who are legally separated.... There are people who have not been living together for 10 years but with nothing legal done in court, and the husband had the right to go and rape his wife. It was really aberrant behaviour! Personally, I find that reform wonderful!"

8.2.1.2 The assault

How about the nature and seriousness of the sexual acts subject to criminal proceedings? The first of the 15 jurists interviewed for this study was a defence lawyer. He told us that for nearly a year, he has been seeing charges emerge that involve so-called sexual assaults that are really quite innocuous: mere touching, such as a slap on the buttocks, stolen kisses, etc. This is a new situation, he stated, explained by social change.

We asked the other participants to react to this suggestion and ultimately found that very few jurists take this view. A second woman defence lawyer did voice the wish that the people authorizing charges would use great discrimination, given that offences under Criminal Code Ss. 246.1, 246.2 and 246.3 are very general and cover a host of matters. Neither this lawyer nor her other defence colleagues, however, held categorically that frivolous charges were actually being laid. This opinion is supported by our examination of police and court records.

From their viewpoint, the judges sitting on the Court of Sessions of the Peace assured us that charges laid in this area were genuine. One of them added that, at present, there are indeed more proceedings for the whole range of assaults of a sexual nature, which means that when charges seem fairly insignificant in sexual terms, they are accompanied by physical violence or threats.

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[5] This attitude arises, in fact, from a Quebec Justice department action policy on marital violence. In 1988, moreover, the department launched a substantial publicity campaign around the unacceptable situation of battered women.

The message was the same from the representatives of the Attorney General's department, who stated that a seemingly commonplace assault may have serious enough after-effects to be referred to the court.

> "A young girl aged 14 or 15 who gets a slap on the buttock from her teacher and has a trauma from it and fails that subject, that can be as serious as other circumstances that are objectively much more significant. There is an abuse of power aspect to that, or intellectual blackmail.... There are cases where a mere slap on the buttocks can fully justify a serious charge, because in certain circumstances the trauma may be greater than in other circumstances where the objective facts are more serious."

On the other hand, such cases are apparently isolated and the associated grievances are no more or less serious than in the past. Prior to 1983, in fact, touching and caresses came under the category of indecent assaults and were prosecuted under the old Criminal Code s. 149 or s. 156.

> "The sexual acts have always been the same. We don't invent any, even though the years go by!... In the case of indecent assault there were also charges for mere touching, like... just lightly brushing a young girl's breast or else touching through clothing..."

8.2.1.3 Growth in complaints

Almost all the jurists interviewed have seen their practice in sexual assaults increase appreciably. It is hard to see a direct connection between the 1983 reform and this growth, and very few of our interviewees ventured to make one. Instead, we were given a list of other factors capable of explaining this phenomenon. Part Two has already told us that cases of this kind actually went from 567 in 1981 and 1982 to 822 in 1984 and 1985 (Table 43).

Although unable to back up their assumption, most of the practitioners we met feel that the actual numbers of sexual offences are no greater than before. Though the crime is more frequently reported, we must see this as a sign of change in a society where there is greater general awareness of this problem area. The new open-mindedness makes itself felt concretely within the social circles of victims. The tendency to make the assaulted party feel guilty has lessened. Prejudices are fading.... Social and medical workers, as well as police, have also apparently changed their behaviour in this respect, and the attitudes of these people, usually among the first approached by victims, is often decisive in terms of how the matter is handled.

> "A lot of social workers used to tell girls who got themselves raped not to contact the police, that it was traumatic for them to testify in court, meet the police and that it would be better if they didn't do this.... I know that now, the social services people encourage girls, victims more to contact the police."

> "Very few of them dared complain because they were treated like another defendant, so they preferred to put up with their lot and not talk about it. The police attitude has changed a lot. They say that even in the police stations in the past... not all, not all policemen, but some of them would make fun of the victim. You didn't like that?... There's still prejudice around. It's not gone with one blow. But we can say that it's on the way out. So the result is that victims are laying many more charges because they are not disgraced by laying charges."

What is more, the various information media are apparently more concerned about this type of abuse and giving it more coverage. This has the dual effect of taking the high drama out of the situation somewhat for other victims, and making them more aware of their rights.

> "There is so much publicity that people see that it's not happening only to them, that it's happening so much to so many people who complain, so then it's normal to make a complaint."

Finally, certain other measures which we have already examined have had the effect of bringing out the child complainant: the awareness campaigns in the schools and the repeal of section 33 of the Juvenile Delinquents Act.

8.2.2 The crown takes over the case

In the following pages, we will attempt to define the roles of crown attorneys and defence counsel from the time the judicial process is set in motion to the first hearing in court.

8.2.2.1 Crown practices

Quite obviously, the duties of the Attorney General's representative are not limited to questioning witnesses and raising objections in the hearing. Even before the case is heard, he or she will have to make a series of moves and decisions of fundamental importance.

Assigning a crown attorney

We have already mentioned that for some years, certain crown attorneys had been specializing, seemingly on their own initiative, in sexual assault proceedings. Without any formal policy being laid down in this respect, these cases were handed to them almost automatically. It happens that the overwhelming majority of these crown attorneys were women.

Is this female "ghetto" defensible? One crown attorney we interviewed thinks so because, she says, it has been shown that victims of sexual assault, who are mostly women, prefer their cases to be handled by someone of their own sex. A male crown attorney, one of the rare men with a significant practice in this area (i.e., more than a third of his cases), rebels against this discrimination.

> "You can give a lot of attention, a lot of comfort to the victims even if you are a male prosecutor. Look at gynaecologists, for example. There are woman gynaecologists and man gynaecologists. The affection factor comes from the worker's care, not the sex."

Remember that in September, 1988, under a general reorganization of crown services, the specialities of certain attorneys will get official recognition, as six of them (including five women) will be grouped together with the main goal of concentrating on sexual assault cases. It seems to us that putting this team together answers a need, because in the spring of 1988 we were informed of a lack of coordination among crown attorneys practising in this area.

Authorizing the charge

The first task of the crown attorney is to decide whether or not to authorize a charge. This is a decision fraught with consequence. If the charge is authorized, the accused may well lose his freedom, his reputation and the respect of those around him, not to mention the money that he will have to spend in lawyers' fees. Thus, it is up to the crown attorneys to weigh the police reports and check the evidence before allowing the judicial process to get under way. One women crown attorney told us that she meets almost all of the presumed victims, especially if they are minors, before approving any charges.

In spite of these precautions, some lawyers for the defence claim that wilfully false complaints do sometimes slide in among the spate of sexual charges. This statement is confirmed especially, they tell us, when the information has to do with family members or, at least, when there was a degree of promiscuity between the parties prior to the offence being committed. We are given to believe that the risk of false charges is greater in the area of sexual assault than with other crimes, although they admit that this probably occurs in only a minority of reported cases. One judge from the Court of Sessions of the Peace concurs entirely with these lawyers' opinion:

> "What we always forget when we are talking about infractions of a sexual nature is revenge... hatched by young girls caught red-handed coming in late in the morning, by women who decide to send their husbands to jail instead of divorcing them. There are false charges and we forget that there are false charges."

According to one woman defence lawyer, part of the problem stems from a lack of critical judgement in investigating officers. This is not intended as criticism since, she says, the police do not have to weigh the substance of the complaint.

> "Police officers don't immerse themselves in a case, they take down stories. I think there is a sort of bias here. They receive information, it's part of their work to inform and lay charges. It's not up to them to decide whether the person is guilty or not."

To this problem are added, still according to the same respondent, certain shortcomings in the way the accuracy of the police report is verified by the crown. To mitigate these failings, she suggests creating a stage prior to approval of the charge in cases where the persons involved already shared a degree of intimacy (assaults between spouses or connected with incest). This pre-inquiry would enable these cases to be studied, with a view to diversion, by psychologists, psychiatrists or therapists of some sort, working with a legal practitioner.

In any event, fraudulent manoeuvres by ill-intentioned complainants would seem to be going unpunished for the moment. At least, this is what we may conclude from the comments of a women defence lawyer who was confronted by this type of case on two occasions:

> "In my practice, I have had two cases of victims who were flatly lying. I had the evidence of this, but the victim was overprotected and was never charged with perjury when she testified under oath that she did not know the individual, and on inquiring we found that she had been living with him for a month. This is straight-out perjury. Why don't they charge her?"

Crown attorneys talked instead about cases where the crown attorney, while according credibility to the victim in terms of the facts of the offence, doubted her ability to deliver coherent, persuasive testimony.

Handling the case and meeting the victims

Although one crown attorney told us that sexual assault must not be seen as a special crime, as this would run counter to the lawmaker's intent, these cases still seem to be given special attention.

This interest is manifested in many ways. In the first place, a single attorney is assigned to the matter from the outset of proceedings to their conclusion.

> "At this point, we take them (i.e., the sexual assault cases), meet the victim, deal with the appearance, presenting the evidence, the preliminary inquiry and the trial. Whereas previously we got cases like that, we did the preliminary inquiry and handed the case to the crown clerk, someone else who handled the trial as in all the other cases, robbery, etc., unless it was a really special case."

Special rooms are apparently also set aside in the Court House for cases of this kind. No more than two hearings are held in a day, which contrasts strongly with the frenzied activity in the ordinary court rooms.

> "Every time we have sexual assault cases, we ask for a full day or half-day. The judge, therefore, has only this case to deal with."

Furthermore, it appears that only in proceedings on sexual matters can crown attorneys allow themselves to establish special contact with complainants.[6]

> "Here in the crown office, we get a lot of volume. As a rule, we don't have a lot of time to work up our cases, but when it comes to sexual assault, we pay special attention. They are almost the only cases where I have the time to comfort my victims. I generally take the time to meet them, explain to them what is coming, how things will go, etc."

These meetings, then, give the Attorney General's lawyers a chance to review the evidence with complainants and explain the technical aspect of their testimony to them.

> "It's a game. It's as if you were playing chess. There are rules and it's a game, it goes to the sharpest in that business.

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[6] And, need it be said, in nonsexual assault cases between husband and wife.

> (the victim) may perhaps be wily herself. And being wily means understanding the system, being able to work with the system. It doesn't mean perjuring yourself, it doesn't mean lying, it means understanding the system. I find it very important to talk to our victims beforehand."

According to one crown attorney, it is also necessary for attorneys to take advantage of these interviews to reassure the victims. The fact is that victims tend to magnify the horrors of the proceedings.

> "All that the victims know about the court is what they have seen on television. Most of the time, when you watch cases of a sexual nature on television, the victim is completely upset, sobs her heart out after five minutes, is made a martyr of by both sides, both lawyers. It's awful to be a victim on television!"

The best time for an initial appointment with the complainant hinges on the circumstances of the case, of course, but the major factor is the crown attorney. One crown attorney interviewed acknowledged a preference for contacting witnesses (especially when they are children) only a few minutes before the hearings begin. In this way, she claims, her recommendations are very much in the complainant's mind, which correspondingly reduces the risk of confusion in the court room. Not all crown attorneys agree on this point, with some favouring meetings in their offices some time before the case goes ahead.

As soon as a case is closed, the attorneys usually lose all contact with the victim. Furthermore, they do not see follow-up as appropriate. Above all, they have neither the time nor the energy for it.

> "Now and then I have happened to have contact with the victim when the case had been over for a long time, but this is extremely rare. What goes on afterwards with those victims, I do not know."

At this stage, we want to emphasize that the statements by crown attorneys leave the impression that their practice is broadly consistent with the policies developed by local and provincial governments for the judicial handling of sexual assault cases.[7]

Coordination with other parties involved

The crown attorneys we interviewed pointed out a real improvement in terms of the nature and quality of the connections that have been built up between the parties involved in the legal and paralegal systems. It actually appears that the various social and medical workers and police officers, as well as the jurists, are working together more easily. A dialogue is beginning to emerge, and the implementation of a round table, bringing together representatives of each of these interests, is certainly not unrelated to this thaw.[8] According to the woman crown attorney delegated to this coordinating group, this is indeed a beneficial forum to the extent that it allows valid and directly involved spokespeople to interact.

There has, therefore, been very positive development at this level. However, there are always gaps to be filled.

Though respondents say that they are generally satisfied with the work done by police and the services provided by the hospitals, some are clearly more critical of the social workers. One lawyer, who offered particularly scathing comments, thinks that the aid centres that pride themselves on offering support, moral or otherwise, to sexual assault victims, should, given their wretched performance, upgrade the hiring criteria for their workers by asking for a university degree or professional certificate.

There are apparently also flaws in the way information of interest to victims is distributed. At present, the crown attorneys and police officers assume the responsibility for informing complainants about the counselling resources available to them (IVAC, psychological follow-up, etc.). Though both groups carry out this task as best they can (though policemen are not all as motivated or aware, given their very large numbers and the diversity of their work), they are not well enough informed on the subject themselves to be truly effective. To solve this problem, one crown attorney suggests circulating a directory with exhaustive lists of the services available to victims of sexual assault as an easy reference for everybody.

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[7] We have cited these policies in Section 2.0 of Part One.

[8] We have already looked at this Round Table and its membership in Section 2.0, Part One.

The last problem recorded by our informants has to do with the crown staff shortage. The inadequate number of counsel relative to the case volume to be handled would explain why they are unable to devote the energy needed to set up better relations with other agencies.

> "If there were a few more people, we could work more professionally and have better consultation with the police, social workers, aid organizations, hospitals, doctors, etc."

8.2.2.2 Defence practices

Compared with the previous subject matter, this does not require as much detail. This area of inquiry is less complicated, given that the defence counsel's role in initial proceedings is much less conspicuous than the crown attorney's. It is also true that, in contrast to the crown attorneys we interviewed, defence counsel have no particular vocation for sexual crimes. We will, therefore, limit our remarks to the acceptance of the defence mandate as such.

Legal aid offices apparently have no particular policy of assigning sexual assault cases to one lawyer or another, in terms of gender or some other criterion. In reality, they told us, no lawyer wants to develop a major practice in this area. The mandate of a defence counsel in a sexual assault case is really very demanding. He or she is apparently under strong pressure, especially as his/her client may be held in jail, but, above all, because such cases are so fraught with emotion.

> "These are cases that are emotionally difficult. It's hard in court, we're often dealing with complainants and victims who are going to cry. There's a lot of emotionality."

The lawyers in private practice we spoke with share this view entirely. Some of their colleagues will go as far as to refuse such cases. Acting in this type of proceedings, they feel, requires a somewhat special turn of mind that is not for everyone.

> "You have to able to detach yourself, especially when it involves children."

8.2.3 The hearing

By general consent, our interviewers speak of a considerable number of criminal cases in which witnesses are never heard, most frequently because the defendant has plead guilty to the charge.[9] Nonetheless, the hearing, when a case comes before the court, is one of the high points in proceedings, and, especially, it was pointed out to us, when it involves sexual assault. On the strength of our respondents' comments, we now venture to give readers the most accurate picture possible of the court-room arena, that "theatre of human misery."

We will focus initially on the choice of procedural vehicle as made by the defendant. After this, we will discuss the evidence given in the hearing, and this event's public nature.

8.2.3.1 The forum

The person charged with a sexual offence and prosecuted by indictment must select, through his counsel, how he must be judged. Will it be a provincial court judge (Part XVI of the Criminal Code)? A judge alone? Judge and jury?

In the Montreal Court House, few sexual assault cases are tried before a jury. Usually, we were told, these cases are settled out of court or are heard by a judge alone.

Why would a defendant refuse to be judged by his peers? Asked about this, a Superior court judge offered two conjectures.

> "He (the defendant) may possibly believe that he has an excellent case in law and feels it preferable to be before a judge alone. Or he may have a very poor case, in fact, and feels it easier to negotiate an acceptable disposition of this case before a judge alone rather than before a judge of the Superior court."

This explanation does not strike us as altogether satisfactory. A different light is shed by a comment from one of the defence lawyers. In his view, the current trend in juries is for them to bring a guilty verdict almost automatically when the charge involves a sexual offence.

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[9] We will be coming back to this question in section 4.1. Remember too that 45 per cent of cases studied had been settled by a guilty plea.

> "The benefit of the doubt does not really go to the accused before a jury. This is why lawyers are not taking rape trials to juries any more."

We have already seen that few cases get to trial, even before a judge alone. The same situation applies in cases of nonsexual assault and attempted murder (Gravel, 1985). One defence lawyer told us that he generally favoured a guilty plea by his client to avoid the victim's testimony.

> "I have said to a client: 'Listen, if we go to trial, the judge is going to hear the victim and there may be problems...' Without the lawyer hiding things from the judge, when he goes over the facts, there is always still the attempt to gloss over the slightly antipathetic aspect of the matter. But when the victim testifies, things are not the same. The judge is acquainted with the facts and also sees what aftereffects that could have left on the victim."

8.2.3.2 Evidence in the hearing

Among the most significant changes brought about in the Criminal Code by Bill C-127 in 1983 was certainly the abolition of some of the old sexual offences and their replacement by new offences with different characteristics, along with the amendments affecting certain rules of evidence. It was, thus, not only the methods of establishing fact before the court that the legislator wanted to alter, but also the actual substance of what has to be established by the crown. One could well expect these amendments to have had a strong impact on the conduct of hearings. We will see in paragraph 3.2.2 whether this assumption is confirmed.

In addition, we add some comments on the medical/legal kit. As we know, this vehicle for evidence was made available to crown attorneys for the first time in 1984, very shortly after the reform.

Before venturing into more technical analysis, however, we want to place this discussion in context. On the strength of our respondents' comments, we will describe the prevailing atmosphere in the court room when such matters are heard. In this respect, we will focus especially on the treatment meted out to complainants by the court system.

The complainant's testimony: general points

We have already pointed out the complainant's characteristics (sex, age, social standing and connection with the defendant) that can reinforce or lessen her credibility in the hearing. We will not go over these again. However, before we deal with the victim's appearance before the court, the reader will allow us to dwell a bit more on the aftereffects of sexual assault, a problem that we have also mentioned above.

From our interviewees' statements, the quite special character of the crime with sexual overtones emerges in detail.

One woman defence lawyer considers that sexual assault, compared to a nonsexual assault, is also the ultimate breach of her physical person. This is why the resultant traumas are potentially more significant than those arising from nonsexual assaults.

> "I find that the sexual offence is more serious than a common assault because it's more of an attack on a person's innermost self, whether this is a woman, man or child."

A woman crown attorney suggested that, although public morality has changed somewhat, this type of offence still arouses feelings of shame and guilt in the injured party, male or female.

> "All victims of sexual assault feel guilty. I thought this only applied to girls and I realized, because I've done a lot of them for young boys, that they feel guilty too."

A crown attorney pointed out the profound confusion and emotional upheaval in these victims.

> "It's hard on the nervous system too, doing that all week long, always meeting people who are crying, who are unhappy with themselves."

A judge of the Court of Sessions of the Peace sees the combination of all these factors as making it hard for the victim to talk about such events with strangers.

> "I have realized that someone who is brought to testify about an assault committed on her has no embarrassment in describing her experience to the judge, whereas the same person who would have had to relate the same facts in a context of rape would have hesitated to use the same words or describe the acts with the same definiteness."

When she is already shaken and vulnerable, how is the sexual assault victim received by the court system? Traditionally, the general public has a highly negative impression of court handling of sexual complaints. In court, the victim is apparently jeered at, discredited, literally tormented by lawyers. Does this really reflect what complainants experience?

It seems not to, if we are to believe the defence and crown lawyers, all of whom protested this impression as unfounded. The crown attorneys had an especially lively reaction.

> "... as if we crown attorneys and as if the judges were letting that happen! I find that... I find it very insulting!"

> "It's false to say that the victim was being tried rather than the defendant. Personally, I've never seen that in court. I've been here for eight years and I've never seen that."

In a later chapter, we will look at the traumas recounted by victims when they come before the court.

Moreover, most crown attorneys hold the view that some of the Criminal Code amendments of 1983 have helped to improve the victim's position in the hearing.

Defence counsel, as has already been said, support the viewpoint of their crown colleagues. They do say, though, that it is true that when such cases come up, the atmosphere in court is tense, even detrimental. This state of affairs, however, apparently arises from the special nature of the charges rather than the attitude of the personalities involved. Asserting that the system today affords the victim a lot of protection (sometimes prejudicing the rights of the accused), defence counsel also protested the popular image of the cruel, pitiless lawyer.

> "We're not on American television. Cross-examination like you see on television does not exist here. Or if it does exist, there's very little of it. The judges don't let us do things like that. You don't have the right to shred the victim. You don't have the right to be condescending. You don't have the right to be disgusting. Often, we don't even let ourselves go because that doesn't help us..."

As indicated by the following anecdote, an arrogant and contemptuous attitude on the part of defence counsel could even sometimes have disastrous results, stirring up situations that are already potentially explosive...

> "I had to represent an individual who got a suspended sentence for incestuous acts with the daughter of his mistress. The mistress's family and her circle put enormous pressure on the media. Fortunately, the crown attorney showed great judgement. The result was that all this produced a brawl in court. I had to intervene physically. They wanted to kill him! I threw a chair into the crowd. I had to throw some punches at the people attacking my client. There were three of them on him before the police came, because we were on the sixth floor of the Court House. There are passions aroused in these cases. I try as best I can to avoid arousing passions just so it doesn't reflect on my client. In other words, I have no interest in revolting the victim or her family."

Who said that practising law was a no-risk profession?

Finally, we must say that the majority of defence counsel interviewed maintained that the principles of Bill C-127 had brought no basic change to their strategies and actions in court.

Before concluding too soon on the quality of sexual assault victims' experience in court, it is interesting to focus on the comments voiced by the judiciary on this and see to what extent their views differ from those of counsel.

Several judges suggested that at one time, rape trials actually amounted to a second victimization for complainants.

> "In the old days when I was a judge and when I was a lawyer, a rape trial would very often turn into the trial of the victim. It was sometimes painful to attend these things because you knew, on the one hand, that the victim was traumatized by the acts for which the defendant was charged and, on the other hand, to see cases supported by examinations that got more and more cutting and which in the end forced the victim to lay out her whole past life, it became almost indecent."
>
> "Occasionally an acquittal might be based on besmirching the victim."

These same judges identify Bill C-127 as one of the factors that have helped improve a situation which is now apparently acceptable. The atmosphere in the hearing is healthier and defence counsel are generally more respectful to victims.

> "The 'rape' atmosphere that used to prevail or longer exists."

Some other judges do not acknowledge the 1983 reform as having that much impact. The way the complainant's testimony is weighed has indeed changed, but not the circumstances surrounding her statement.

> "No. I wouldn't say that the amendments have changed anything in that respect. In most cases, surely it is a major experience (for the victim) as it was before... as it always will be."

All the judges agreed that, without minimizing the seriousness of sexual crime, there is still no justification for meting out favourable treatment to this type of complainant. In other words, practitioners should not develop the "sexual assault victim syndrome."

> "All victims of criminal acts have the right to the court's protection, have the right to respect.... We must not develop a fixation on the victims of sexual assault because they too have rights like all the others."

Impact of some Criminal Code amendments

A more in-depth study of some Bill C-127 provisions that can affect the conduct of the hearing will enable us, in this section, to pinpoint and clarify a number of the comments made in the previous section.

Prohibited conduct

The 1983 repeal of the provisions for the crimes of rape, attempted rape and indecent assault, and their replacement by the offences of sexual assault simpliciter, with a weapon, and aggravated sexual assault stands for more, we think, than the adoption of new terminology. Readers will recall that the degree of violence used in committing the act is what differentiates the assaults in Criminal Code Ss. 246.1, 246.2 and 246.3. The choice of a criterion other than sexual to determine the seriousness of these crimes apparently shows a basic shift in the legislator's approach. In fact, everyone knows that to satisfy the definition of rape, the crown had to show beyond all reasonable doubt that there had been penetration of the victim's vagina by the assailant's penis.

The evaluation of the appropriateness and expediency of these amendments goes beyond straightforward legal reasoning to challenge the personal values of those who make the assessments. This explains why the jurists' reactions in this respect range from unbounded enthusiasm to the profoundest disapproval.

It is, therefore, hard to distinguish clear trends among respondents. All the same, we stress that the comments made by crown attorneys were somewhat positive, with a few discordant notes. The comments by defence counsel were less so. While acknowledging virtues in the current codification of offences, they also point out a number of shortcomings. As for the judges, they are altogether divided on the matter. Finally, it may be significant to note that those disparaging the 1983 classification most vigorously are males with many years of practice. These strong opponents, however, account for only a small minority of our interviewees.

Respondents differed in their opinions on three major points. The first topic that sets them against one another is the appropriateness of the new classification criteria for sexual offences.

Several of them were delighted by the disappearance of the "sexist-inspired categories." According to one magistrate, the term "rape" in ordinary speech has a pejorative connotation, and a separate legal terminology was needed.

Regarding the old division of offences, a good number of the jurists we spoke to (crown attorneys as well as judges and defence lawyers) feel that it was flawed because it was arbitrary. The legislator of the time is particularly criticized for not taking the seriousness of acts committed into account and placing excessive emphasis on vaginal penetration. For these reasons, Bill C-127 was very well received by these respondents.

> "Formerly, the big deal was rape. As soon as there was no penetration and no violence used, it wasn't much."

> "The emphasis is not on the orifice chosen for 'performing' a sexual assault any more, but on a sexual act that may be an act of fellatio, in the back of an alley, with a weapon, which is in my view as serious as sexual intercourse in the meaning of rape.... So I find that is the greatest improvement. Before, an act, such as I described just now, would have only been an indecent assault, and for rape to occur, there would have had to be sexual intercourse. I found that ridiculous."

One positive effect of the reform was apparently to place sexual offences in the more general context of acts of violence.

> "Today, the act is ranked solely by the type of violence involved, never mind the attack on the woman's privacy. You can have a sexual assault of the type of indecently touching someone with a firearm and that takes us to the top of the scale. So that changes the whole perception of the crime."

In other words, a sexual offence is no longer viewed first as an attack on a moral standard of society. With the 1983 reform, the legislator apparently recognized that this type of assault is primarily an act of domination, violent domination by one person of another.

We may surmise that this concept of sexual crime is not shared by everyone. The objectors claim that it does not correspond to reality. To them, sexual assault is in fact a breach of a person's innermost privacy and should be distinguished from assaults that lack this particular dimension. Judges and defence counsel made a number of comments to this effect.

> "Maybe the lawmaker wanted to base it mainly on violence, but I myself am not convinced that violence is the basic

> factor to be considered in crimes of a sexual nature.... It is a very important factor but far from the only one. The act in itself is surely as significant in many cases as the violence employed."
>
> "Sexual assault is a matter of violence but this is sexual violence. The sexual aspect has not been taken away: this is what makes the difference between an aggravated assault and an aggravated sexual assault."
>
> "I say that the sexual aspect is very important, much more than the violence aspect."
>
> "... to the annoyance of some women or some feminists, there really was a sexist connotation in the old provisions but it was not, in my view, deplorable. What do you expect! We must not go against nature and anatomy! We have to see things as they are..."

In the view of a woman crown attorney, codifying sexual offences solely in terms of the amount of violence involved does not reflect what victims actually experience.

> "I can tell the court all I want that penetration, whether in the mouth or in the vagina, is the same. It's not the same. It's not true. In reality, women see that differently."

From his standpoint, a magistrate explained how the present wording of the Criminal Code could lead to absurd situations.

> "An individual who has a knife in his hand and, I don't know, pinches someone's behind, woman or man, that doesn't change anything. It would objectively constitute, according to the legislator, a more serious crime than the old one of rape if the victim was not injured or anything."

A second judge from the Court of Sessions of the Peace who, incidentally, is somewhat in favour of the reform, nonetheless sees another significant shortcoming in it.

> "Formerly, charges of rape may have had a quality of inherent seriousness that has been diluted a bit in the form of the amendments. This is to say that at the time there was a quality that had to do with penetration and all that this implied in society's terms. But doing away with that completely has perhaps had the effect of somewhat cheapening sexual assaults in certain cases."

For all these reasons, some jurists interviewed want to go back to the old system. We emphasize again that this position involves only a tiny minority of respondents.

> "I think that there is no reason for the old rape to disappear. They should have maintained the offence of rape as it was."

> "We might be more specific, however, define various types of sexual assaults by considering, more perhaps, biology or anatomy. That would facilitate things considerably, somewhat as in the old definition."

The second point on which jurists are opposed has to do with the generality of the new texts. The fact is that Criminal Code Ss. 246.1, 246.2 and 246.3 do not specify the nature of the prohibited sexual acts. For some, this wording has advantages, but others are uneasy about it.

We may be surprised at the statement by some defence counsel that the current provisions are clearer than their predecessors. In the view of these practitioners, the aggravating criteria are more objectively identifiable: injuries, use of a weapon...

> "At what point is it an indecent assault, at what point is it gross indecency? That was much more confused in everyone's mind, whereas a sexual assault needs someone who does not agree and an act of a sexual nature. So it's simple."

Crown counsel congratulate themselves on the end of an overstrict breakdown.

> "Sexual assault covers a whole range now: it goes from the old indecent assault to the most sordid crime of sexual violence. That lets us manoeuvre more easily through all these offences, definitely."

Some speakers, however, are alarmed by the vagueness of the texts.

> "Certain people could be found guilty for committing an act like giving a slap on the behind. Obviously in that section, 246, sexual assault is very general. It is interpreted very generally so that there are no restrictions. We thought about the lawmaker's goal in passing that section. It was supposed to encompass the maximum of possible situations, and I think we have to hope for some judgement from the people laying charges."

It would be appropriate, these persons add, to define the crimes in a more restrictive way.

We also questioned jurists on the amendments' tangible impact regarding the nature of sexual offences. This third and final discussion point elicited much less in terms of opposing comments than the first two did.

A judge from the Court of Sessions of the Peace told us that, in spite of the reform, judges and lawyers in practice for more than 10 years are maintaining the old attitudes. Moreover, this statement is taken up by a number of defence lawyers.

> "I think that the judges have come to the point of separating sexual assault, resembling rape, and sexual assault, resembling indecent assault."

> "In the first place, the question you are asking is: all right, what type of sexual assault is it? Did he just touch one of her breasts or did he rape her? It's very important but that is going to stay as a reflex because it is there, perhaps, in spite of all the new legislation. It may be there that we see it as more serious. It's when there was sexual intercourse with no consent, it gets more serious at that point."

On the other hand, most crown attorneys as well as some judges we met feel that it has become easier since 1983 for the crown to make a case. Examination and cross-examination are also less painful for complainants.

> "Sexual assault, when it comes to getting the proof, is a lot like indecent assault before. Rape always posed the problem that we had to have proof because you had rapes that weren't necessarily completed sexual intercourse, that were partial penetrations and all that. So we also had to bring all sorts of evidence secondary to the victim's testimony. We had to get our proof beyond all reasonable doubt of penetration, so we often needed medical evidence and the presence of spermatozoa and all that. It was really very cumbersome, and for the victim too, long drawn-out testimony on penetration: To what degree? How? How many times? It was really tiring. Whereas nowadays sexual assault is like indecent assault.... In that sense it's simpler, examinations are not as hard on the victims, it also needs less circumstantial evidence..."

Some defence counsel challenge these statements, saying that they have made no changes in their conduct at hearings since Bill C-127 was passed, but most of these practitioners admit that they are concentrating less on the most intimate details of the assault. Here again, this suggestion needs to be qualified since evidence of vaginal penetration still seems to have relevance.

> "The victim may not be forced to go into detail if penetration occurred but, even at that, she will be asked if there was penetration, because it is an important factor in sentencing."

We may conclude by pointing that although the new Criminal Code s. 246.1 and subsequent sections have inevitably had an effect on the hearing process, legal practitioners still do not seem to have basically altered their approaches in court.

The idea of consent

Before Bill C-127 came into effect, as afterwards, it was activities of a sexual nature with no consent that the legislators wanted to criminalize. In sexual matters, nonconsent or no valid consent on the part of the victim is one of the key elements in the crown's evidence. The debate in the hearing apparently often revolves around this thorny question.

> "The idea of consent will always come up in sexual assaults. They are not crimes that are easily defined like the other crimes. Breaking and entering is easy: he broke the window and went in, and they found him on the premises. With sexual assault, there is always this factor of consent. There are the circumstances in which this happens: did the defendant make a mistake re consent?"

Confronted by conflicting stories from witnesses and situations that are sometimes ambiguous, the judge in the trial may find it very ticklish deciding whether the acts were committed with the victim's consent or not. The events surrounding the matter, the credibility of the witnesses and some circumstantial evidence will help the magistrate to do so.

> "Everything is open in this area. Every case is a specific case, you have to plead it on its merits."

Because the evidence relative to the refusal of consent or no valid consent by the complainant remains essentially a question of fact, the legislator's 1983 efforts to clarify this concept have been received by most respondents with indifference. Many of them mentioned the lack of impact and relevance of the Criminal Code amendments in this respect. In their view, the idea of consent, as such, did not present any special problems prior to the reform. In fact, the courts had already developed the applicable rules. At best, the new legislation has codified one of the principles recognized in jurisprudence.

> "The rule established by the Supreme Court in Pappajohn[10] is now codified. In this sense, then, it is clear, clean and precise: it is now included in the Code. That may have simplified things, but I think that it was still understood by everybody after the Supreme Court decision."

At any event, the contents of paragraphs 3 ("Consent") and 4 ("Accused's belief as to consent") of Criminal Code s. 244 seem clear to most of our interviewees. Two or three of them, however, point out some ambiguities in the present wording. They particularly wonder about the concept of fraud as meaning no valid consent. This is a vague notion, one defence lawyer holds, and is liable to make for significant arbitrary latitude.

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[10] Pappajohn v. R. [1980] 2 S.C.R. 1149.

Amendments to certain rules of evidence

In the process leading to the passage of Bill C-127, a number of jurists had expressed concerns about the amendments to the system of evidence that the lawmakers were considering. They were especially apprehensive about this legislation interfering with the defendant's right to a full answer and defence and resulting in unjust convictions.

More than five years have gone by since Bill C-127 came into effect. Have these apprehensions been substantiated in any way? We surveyed respondents on this matter and found, not to our surprise, that more often than not their opinions depend on the positions they occupy.

The Attorney General's attorneys we interviewed unanimously maintained that the rights of the accused are in no sense prejudiced or diminished by the 1983 reform.

> "The margin of error in our judicial system is always on the criminal's side. We prefer to have nine guilty people acquitted rather than one innocent one convicted. I can tell you that it is extremely rare for innocent people to be convicted and that it is much more frequent to see the guilty acquitted."

By and large, the judges hold the same view, but they do voice some reservations. In most cases, we were told, the present legislation is not prejudicing the accused to any great extent. On the other hand, situations may arise in which the rigidity of the texts (they refer more specifically here to the Criminal Code provisions that limit cross-examination of the complainant on her sexual history) could be a source of injustice. In these exceptional circumstances, the courts have apparently, up to now, mitigated the law's shortcomings so that the basic rights of defendants are protected.

Defence counsel are much more critical of the new rules of evidence. Without actually saying that these provisions have resulted in violation of the rights of the accused, they claim that these rights are at the very least endangered.

By reducing the evidence requirement, the lawmaker has in effect taken away some of the safety devices that protect the integrity of the judicial system.

> "Men charged with sexual assault are in a tragic position, because the victim is going to come and tell her version, she doesn't need to be corroborated, nor does there have to be a medical report to the effect that sperm was found or whatever. That isn't necessary any more: they proceed on the story of the victim... it's a matter of credibility that comes into play, but the accused, his rights in relation to the victim, I don't see that he has any at all. He is limited under 246.6 on the victim's sexual behaviour, the recent complaint is not important any more, corroboration is not required any more.... Men have to be careful nowadays. A man who meets a girl in a bar and takes her home with him, he has to be careful..."

Though the defence lawyers are aware that Bill C-127 was enacted to put any end to certain abuses against complainants in sexual assault cases, they still feel that it could create other excesses that would be inconsistent with the very philosophy behind our laws.

> "Our system has always been understood this way: we prefer letting the guilty go free than convicting the innocent. And this is less and less true."

> "At the present time, I think that it's a bit unjust towards the accused, and I think it would be better to be a little more unjust towards the victims, silly as that may seem. Let's turn things around a little because, in the end, an innocent person must not be found guilty."

We will focus separately on each of the Criminal Code provisions behind this controversy. We will be looking at the rules on corroboration (s. 246.4), recent complaint (s. 246.5) and the complainant's sexual activity (s. 246.6 and s. 246.7).

Corroboration

Let us first recall that in 1976, the legislator had amended Criminal Code s. 142 so that a guilty verdict could be reached in cases of rape, attempted rape and indecent assault in the absence of evidence to corroborate the victim's testimony. The judge in the trial was still obliged, however, to warn the jury of the danger of relying on a statement when its veracity was unconfirmed.

In 1983, Bill C-127 clearly stated that no corroboration was required to convict an individual charged with sexual assault. Moreover, as could be read in the new Criminal Code s. 246.4, the judge was not to instruct the jury in the old sense.

When invited to comment on the second of these reforms, the jurists we interviewed showed a lack of interest in the value and impact of the 1976 and 1983 amendments.

Crown lawyers, of course, were in favour of the repeal of the old statutory requirements concerning corroboration. Initially, they pointed out that the new law makes proof much easier. As a rule, sexual crimes are not committed before witnesses and material evidence may be hard to collect. We were also told that it was indefensible in principle to apply this particular system of evidence in trials of a sexual nature and not impose it for charges of a different kind. They added that, although the 1976 amendment was significant, the one of 1983 has had very little influence on practice except that in courts today, neither the opposing party nor the judge will comment on the absence of corroboration.

This having been said, a crown representative confided that it might actually be difficult to get a conviction based on only one testimony, especially when the assault involves people who are connected in some way (spouses, members of the same family, friends...).

> "Everyone in a court room is looking for the witness's interest: they are trying to find out if the witness had a reason for saying an untruth. There are situations where it is clear that a witness can have no interest; there are situations that are a little more confused. And there, if you have just one witness, proof is certainly harder.... If you have corroborating evidence or at least evidence supporting the victim's testimony, you use it, because it is hard to get a conviction on the testimony of a single person."

Like the crown attorneys, the judiciary seems to have been fairly receptive to the successive amendments concerning corroboration although, as stated by a judge from the Court of Sessions of the Peace, they have had the effect of complicating their work. Since they are not bound by the absence of corroborating evidence any more, in fact, judges must now analyze the evidence with great caution when it consists simply of two conflicting stories. In this respect, the members of the judiciary seem to have taken some self-imposed safety measures:

> "With testimony from anybody, there is still generally a sort of rule of discretion: when testimony is not corroborated, it has to be studied closely in terms of the rest of the evidence."

Moreover, the Superior court judge we interviewed feels that although s. 246.4 did away with the common law rule that made the warning compulsory, this provision still did not go as far as to prohibit the judge from issuing the warning if he deems it appropriate in a particular case. In a case where the outcome depended on the credibility of a victim of dubious reliability (which, according to this magistrate, would be a prostitute case), he would not hesitate to urge caution on the jury, and he would do so in the terms and following the procedure advocated by the Supreme Court of Canada in Vetrovec v. The Queen.[11]

The only really negative comment on the abolition of compulsory corroboration and the warning in the absence of corroborating evidence came from a defence lawyer. In his view, the corroboration requirement in sexual matters is perfectly justified, given that the risk of false charges is greater in these matters than for any other offence. Commenting that he feared for the integrity of the judicial system, he waxed vehement on the subject.

> "So what's the idea? To find villains to soothe ... perhaps soothe the fears of certain women? Or because of publicity by the feminist movements? I have always thought that our legal system was that we preferred having 10 guilty persons at large than one innocent one in jail. I think we are getting much too far into a situation that can sometimes look dangerous."

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[11] (1982) 27 S.C.R. (3d) 304. The Court established in this case that it was up to the judge in the trial to assess the appropriateness of warning the jury about the uncorroborated statement of a witness who is a party, the complainant, or of damaged or bad character.

It may appropriately be remembered at this point that fewer than 50 per cent of sexual assault cases come to trial and of these, only four per cent are heard by a judge and jury. The fact is that the warning would therefore have little occasion to be applied.

The recent complaint

Developed in jurisprudence before 1983, the rules of evidence for the recent complaint were applied only in proceedings where the charges were sexual in nature.[12] In this area in fact, the complainant's credibility has a very special impact on the outcome of proceedings and is sometimes actually the main point in dispute. In this context, the complainant's behaviour after the event became symptomatic of the assault.

Remember that in 80 per cent of the cases we studied, the offence had been reported to police on the day itself or the next day, and that the other cases were reported fairly promptly. It should also be emphasized that, although the new legislation explicitly did away with the recent complaint, we saw no change reflected in the subsequent data.

This having been said, most jurists surveyed on this matter cast doubt on the merit of these old rules of evidence. In the first place, they were emphatic that the rules were based on mistaken premises. The comments from two crown attorneys are eloquent.

> "It was based on this: an ordinary person experiencing such a crime absolutely has to go tell someone else immediately after it happens. I think that was more damaging, that hurt us more than it helped us because the 'normal' world does not exist."

> "I think it's an old stereotype. They said that the person had to complain at all costs to the first person to come along. That's not true, it's not human nature. When we've been attacked, subjected to violence to our innermost being, as a rule we won't be stopping people in the street right away to complain. Often, we are going to wait for a situation where we have some confidence, where our fear has been dispelled,

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[12] Especially R. v. Timm, (1981) S.C.R. 315.

> etc. I have even seen cases, incest cases, where the people decided to talk about it several decades later, when they were undergoing therapy."

In the view of a judge sitting on the Court of Sessions of the Peace, the idea of the recent complaint was even more pernicious in that the victims who were the most reluctant to report the crime at the first reasonable opportunity were the ones who had suffered the most heinous assaults.

> "The more brutal the rape was, the less chance there was of a recent complaint, because the woman had stayed completely seized up after the horror she'd gone through. Requiring proof of a recent complaint by someone who was psychologically unable even to complain -- it could sometimes be hours before doctors or friends were able to calm her down -- meant imposing an almost impossible burden on the crown."

A second magistrate stresses the obsolete character of the concept of recent complaint.

> "It was anachronistic, as moreover Mr. Justice Lamer remarked in Timm.[13] It was an anachronism because it was only in matters of sexual crimes that the proof of recent complaint was allowed. You had a case of fraud, a hold-up case, a murder case, there was no recent complaint."

Of course, in cases where the crown was unable to show evidence of a recent complaint, there was no rule of jurisprudence that authorized the judge in the trial to conclude automatically that the charges were false. We were told by some respondents that defence counsel did not go after a complainant who defended herself convincingly and competently. Nonetheless, several of them felt, where there was no charge that met the (really quite restrictive) eligibility criteria recognized by the courts, the effect on the victim's credibility could be highly negative, especially if the opposing party stressed this fact in argument.

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[13] Timm v. The Queen, (1981) 21 S.C.R. (3d) 209 (C.S.C.).

Among our respondents, then, it was unusual to find a positive view of the rules of evidence concerning the recent complaint. This was not the case, however, with a judge of the Court of Sessions of the Peace. And for the sake of accuracy his comments are reproduced here.

> "There are cases known as 'yesnos' in terms of consent -- the 'yes' and the 'no' together -- where it is very hard to judge, very hard. And since a decision one way or the other is fraught with consequences, the recent complaint was sometimes helpful."

This same judge agreed that a recent complaint reported by a third party involved the inherent dangers of hearsay. The risk of this third party distorting the victim's story in good faith was perhaps even aggravated by the fact that this exchange came shortly after the assault and thus more often than not in an atmosphere of high emotion and distress.

The reader is not unaware that the legal concept of recent complaint was abolished when Bill C-127 came into effect. However, the effects of its repeal seem to have been mitigated in various ways.

For example, a statement that would have been characterized as a "recent complaint" under the old system might, in certain circumstances, still be admissible today as res gestae, as original evidence or to restore the complainant's credibility against an allegation of recent fabrication.

When the lawyers are unable to use these few exceptional measures, the ordinary rules, excluding hearsay and self-corroboration by the witness, apply. At this point, counsel will no longer be able to place in evidence the victim's statements in a recent complaint context. Going by the jurists we interviewed, however, this prohibition does not encompass the complainant's behaviour on this occasion. In this sense, the crown attorneys do not feel that an effective means of proof is lost to them.

> "We can't place the words in evidence any more. But what do you want from words? If she said, 'I was raped' and sobbed her heart out and bounced off the walls, now you can place in evidence that she sobbed her heart out and bounced off the walls. So the effect is the same."

> "I can ask a victim the question, 'Did you talk about it?' 'Yes, at once, when I got home I told my mother about it.' But I can't get into the content, this I can't do. I don't use that as corroboration, but in the end it's logical behaviour. I use my elbows too. Even though all the rules surrounding recent complaint are abolished, when I feel that corroborates my argument, I use subtle and still legal ways of getting the message across."

At times, defence counsel are apparently also interested in drawing attention to the complainant's subsequent behaviour.

> "Of course the defence always tries to show whether the victim made a complaint or had chances to make a complaint and didn't make use of them or didn't do so. In one way or another, we always try to bring it out in the testimony or in evidence, argue it, whether this is legal or illegal. It's done all the time. You say: 'Listen, you have just been assaulted, you have just been raped, you are alone with a third party for a certain period of time and you don't talk about it! What's going on?' You insinuate that she should complain."

The judges of the Court of Sessions of the Peace, moreover, gave us to understand that they placed no restrictions on this type of evidence, finding it entirely relevant.

With the new legislation, on the other hand, the excessively negative effects of the concept of recent complaint have been partly set aside. Accordingly, the fact of a victim not complaining immediately after the event would seem not to have such a prejudicial impact on her case any more.

> "The implication that had to be made that every time a victim did not complain, her story was not true, is much less used, much less of a factor than formerly."

It still remains, as a number of defence lawyers stressed to us, that if the victim's behaviour after the sexual assault is incompatible with the gist of her statement, this will unquestionably prejudice the claims of the crown.

> "The strictness of the charge... has certainly been abolished. But if she (the victim) does not complain to anyone or if she doesn't reveal anything in the hours, in the days that follow, it is no good for her case."

The complainant's sexual behaviour

The reader is not unaware that at the time of the 1983 reform, the lawmaker had felt it expedient to tighten up the conditions of admissibility of evidence concerning the complainant's sexual conduct with persons other than the accused. This was the spirit in which CrC s. 246.6 was enacted. The legislator also showed an intention to protect the complainant's privacy by providing in CrC s. 246.7 that evidence of sexual reputation for the purpose of challenging or supporting the complainant's credibility was inadmissible.

Asked to express their opinions concerning the merits of these new provisions, the jurists we spoke to expressed highly diverse points of view. It is amusing to see once again how paradoxical their arguments and justifications are.

Of our respondents, then, the crown attorneys were highly pleased with these amendments to the rules of evidence. On their side, the judges were somewhat divided on the matter, while defence counsel were generally critical.

First, let us go over the comments voiced by those interviewees who enthusiastically welcomed the new CrC Ss. 246.6 and 246.7.

Some of these practitioners began by emphasizing that the new rules governing evidence of the complainant's sexual behaviour are really only a reflection of changing attitudes, of what might be called the liberalization of sexual experience. Beyond question, they told us, today's society is much less glibly moralizing or dogmatic than it was.

> "It's as if, at the time, we told ourselves: 'Since she has lovers, sleeps with people, why not with him? He has the right too!' This amounted to saying that, in the end, you were not worth much because you were sleeping with people without being married to them."

It was also maintained that the amendments made it possible to rectify a painful situation for victims called to testify in court. The fact is that, on occasion, victims apparently used to be subjected to particularly sharp cross-examination on their previous sexual lives. This would sometimes make one think, some interviewees added, that it was actually the trial of the complainant rather than the accused. Especially since he was not obliged to testify...

> "The person's reputation was demolished. It wasn't enough that she was the victim of a sexual assault. On top of that, she had to answer all the questions about her previous sexual life. She was humiliated, her dignity was attacked."

Since the 1983 reform, then, the debate has been limited to the facts and issues directly connected with the proceedings. This is why the victims' courtroom experiences became less difficult. Moreover, crown attorneys are in a position to inform complainants in advance, and more fully, about the nature and implications of the cross-examinations they will have to go through. The result of this has apparently been to take some of the high drama out of the judicial process from the viewpoint of these witnesses, who may be highly vulnerable.

It should be added that those respondents indicating satisfaction with the rules stated in CrC Ss. 246.6 and 246.7 said that they did not see to what extent these provisions might infringe on the basic rights of the accused. They feel it is unusual for a victim's previous sexual behaviour to be relevant evidence. What is more, the prohibition in CrC s. 246.6 is not absolute. Accordingly, this provision is open to this type of evidence in certain circumstances.

We have already stressed that a number of our interviewees were upset by the new rules governing the admissibility of evidence of previous sexual behaviour. They feel that the so-called abuses prompting the reform were grossly exaggerated, since brutal cross-examinations were actually very rare prior to 1983. They were concerned that application of the strict rules contained in CrC Ss. 246.6 and 246.7 may prevent certain defendants from making a full answer and defence.

> "Sometimes, in certain types of sexual assault, the woman's attitude in sexual intercourse with that man, or with men generally, or certain categories of men, is relevant to the case, and the rules of admissibility for this evidence are too burdensome for the defence lawyer."

As some judges and defence lawyers pointed out, the amendments are neither realistic nor appropriate because they were developed in response to very special circumstances: a victim assaulted by a total stranger, usually in a public place. Now, as we know, in most cases the parties to the offence already knew one another before the crime was committed.

> "If I'm walking along the street and get kidnapped, put into a car at gunpoint, raped, beaten up and abandoned... the fact that I'm sleeping with every guy in the city of Montreal is of no importance and has no place, I believe. But when the defendant and the victim know one another -- this often happens -- when they met during the previous evening... I find the attitude of the alleged victim very significant. I find it important for judging her credibility and I also find it important for judging the impression the guy could have of her conduct."

And how about the case of someone who, usually involved in prostitution, lays a sexual assault charge? Is this not a situation in which the new rules of evidence might prevent the defendant from making a valid defence of mistaken belief as to consent?

> "Suppose, for example, that the victim of the sexual assault is a prostitute.... It has already happened, I've had such cases... Now naturally, the matter of consent becomes important. We have to know: is this a sexual assault with no consent by the victim, or is this consensual sexual activity that went bad because the money agreement was not honoured? At this point, it becomes important to know about the victim's general and sexual reputation."

But in this case, the circumstances surrounding the act are much more significant than the complainant's standing.

The medical/legal kit

In the spring of 1988, when we conducted our interviews with the jurists, a number of respondents were still fairly unfamiliar with the medical/legal kit. Some defence lawyers did not know quite what it was. Some had never seen the test results from this kit introduced in a hearing, while the Superior Court judge we interviewed was not even aware of its existence! The crown attorneys (and, generally, the Sessions Court judges) were quite obviously much better informed on the matter. It may be assumed that their colleagues' lack of information is due to the fact that the medical evidence arising from the kit's use is still not often used in court. Are we to infer that this source of evidence is useless and without purpose?

In any event, this is not what emerges from the comments of a number of our interviewees (including crown attorneys, judges and even defence counsel). The medical/legal kit is seen as a working tool that can prove very useful in bargaining between counsel for the two parties.

> "The fact that it is not brought in does not mean that it is not of great use. It has often been used to get admissions, for example: torn clothing.... You don't see it often if you are watching the trials, but the medical/legal kit is behind the entire proceedings."

The use of the kit is seen as all the more advantageous, they tell us, in that it is well designed and provides a reliable source of information.

> "It's so well done! There was a bunch of so-called evidence that was hard to produce before and now gets done in two shakes, three moves."

Using the kit also has the advantage of standardizing and systematizing the evidence collected when sexual assaults occur. Moreover, the police and medical workers who are called on to cooperate at one point or another in the examination of the victim are seen as competent and conscientious.

> "In the few cases I have seen, it was obvious that the doctors had been trained as to how to testify, how to use the medical/legal kit. So that when they came to testify, the evidence was clean, clear and precise. In no time at all, everyone was pleased, the defence, the crown and the judge. I totally approve of it."

However, some respondents were more or less vehement in disparaging the medical/legal kit.

One women crown attorney is critical of the fact that the victim has to submit to some more or less painful examinations so that the appropriate forms can be duly filled out.

> "The victim has to get completely undressed, stand upright on a piece of paper. Her hair is combed, her pubic hair is combed... the pubic hair, the hair on her head, more or less everywhere to try to find traces of the assailant. I don't think that a victim who has just been raped appreciates it all that much..."[14]

The complainant often goes through this ordeal in vain, the same lawyer adds, contrary to a number of her workmates, she see the actual usefulness of the evidence gained in this way as being very limited indeed.

> "Personally, I've never used it, because in most cases the assailant will say: 'Sure we had sexual intercourse, but she agreed to it.' So what can we find? Even if we found his sperm, his hair, his saliva, that would not change a thing."

Many defence lawyers voiced similar views. To them, in fact, the kit's pertinence is highly relative, since proof of vaginal penetration (or any other defined sexual act) is not required for a conviction under CrC Ss. 246.1, 246.2 and 246.3. What is more, apparently, the sexual intercourse is often admitted by the accused.

> "Obviously, the kit will let us establish whether sperm was present. In these cases, in any event, the defence does not as a rule focus on the fact of no intercourse. It will focus on consent."

Everyone agrees, however, that the evidence in the medical/legal report can enhance the credibility of the crown's version and that this report certainly has an impact when it supplies unambiguous answers to the questions in dispute. For example, it would be expedient to use the kit when it can establish that a certain amount of violence was exerted in the incident. Physical coercion, as we know, is seen as an aggravating factor in sexual assault under the new legislation.

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[14] The medical/legal kit referred to in this testimony is the one dating from 1984. As we know, a second and streamlined version of the kit was developed in 1987.

> "To me, the medical report will have an influence mainly on the injuries that could be noted. For me, that is an important factor."

8.2.3.3 The public nature of the hearing

Justice has to be open. This is a basic principle enshrined in section 7 of the Canadian Charter of Rights and Freedoms. However, it is possible under CrC s. 442 to derogate from this provision when required by "the interest of public morals, the maintenance of order or the proper administration of justice." This provision is apparently used on a regular basis in proceedings where the charges are sexual in nature.

The order to clear the court partially or totally is generally made at the crown's instigation. More often than not, judges will agree to such applications. Our study of the files supports the jurists' impressions in this regard (Part Two, Section 6.0).

> "I will confess to you that I don't think that has ever happened to me, refusing to clear the court in matters of sexual assault. I'm not saying that I wouldn't refuse, but I would have to have reasons.... I don't know, but that seems to be to be an area where the victim is much more at ease in camera. If only for that, for the sound administration of justice..."

The exclusion of all members of the public or even one simply on application, however, is not as automatic as it was before the Charter came into effect in 1982. The lawyer calling for this measure is obliged to defend his request; it is not a mere formality any more. Moreover, according to respondents, the Quebec Court of Appeal has laid down certain parameters with respect to criteria for in-camera hearings, and one magistrate held that this procedure should develop further over the coming years. It emerges from all this that, although judges are usually well-disposed when an application for a sexual matter to be heard in camera is referred to them, they are apparently not showing the same easy tolerance as they used to.

> "I order the court cleared when asked, but only for the testimony of the victim and only, in these cases, when I am convinced that without the court cleared, she will not be able

> to testify.... In all cases, I limit the in-camera hearing to the necessary minimum, after which I lift the order."

Actually, we noted no difference in the files between the years 1981 and 1985.

In support of its motion for an order to clear the court, the crown will argue that the complainant will be prevented from testifying freely if the public are present in the court room. The crown attorney will cite, for example, the victim's youth, her connection with the accused or the special nature of the charges to explain the trauma that public testimony would provoke.

> "When you have a young victim who is particularly traumatized, it is almost always granted. But to clear the court merely because the facts are 'gory,' especially sordid, that's not a reason. There must really be trauma, genuine fear in the person who is testifying. It has to be in the interests of justice and the interests of that person."

In answer to the crown's allegations with respect to excluding the public, some of the judges we questioned confided that they gave priority to the wishes of the victim herself. These judges ask the witness directly about the desirability of an in-camera hearing and, as a rule, they comply with her wishes. Moreover, respondents pointed out that children were readily granted this exclusion measure.

Evidently, defence counsel rarely object to a crown motion to have the court cleared, especially if the victim is a minor. They are not always satisfied, however, that the motion is relevant. One of these lawyers stressed that, in many cases, a publication ban made by the court under CrC s. 442(3) would afford the complainant adequate protection. In any event, excluding the public apparently does not, as a rule, have unfortunate consequences for the accused.

> "Certainly it's important for justice to be open, but it is always possible for an informed person to listen to the tapes.... So justice is always public as far as I'm concerned, and in-camera hearings and publication bans pose no problems for the jurist. That doesn't remove the rights of individuals."

What is more, as disclosed to us by some crown attorneys, an order to clear the court often suits the interests of the defence.

> "Rarely will the defence object in these cases, because the defence has no interest in putting his client's acts on public display."

For this reason, far from objecting to the exclusion of the public during the victim's testimony, some defence lawyers would even ask that this measure be extended for the duration of the trial. Apparently too, in cases where the crown does not avail itself of s. 442, the defence makes a motion of its own. In our examination of the files, we found only 10 per cent of cases where the motion originated with the defence. Judges are apparently much more reluctant to act in these circumstances, however, and some crown attorneys see this as perfectly justified.

> "I don't think the defendant has the right to be tried in camera. Personally, in any case, I would fight hard for him not to have that right..., I don't think that the court should be cleared for the entire trial. In camera is for part of the evidence, so that it can be given, this evidence, before the court, considering that there would be no way of giving it if we did not protect the victim at that point."

Jurists said very little about publication bans. Should we assume that this clause was unimportant to them?

8.2.4 The conclusion of the judicial process

We will focus in this section on the outcome of the original proceedings and then, though very briefly, touch on appeals.

8.2.4.1 Guilty pleas

A number of our interviewees maintained that a significant percentage (put by some at over 85) of criminal proceedings end in guilty pleas. This statistic would apparently apply to cases of sexual assault. Actually, our study shows the percentage as 45.

Has the percentage of guilty pleas, specifically in sexual matters, varied since 1983? Most respondents refrained from commenting on this subject, but a few, very few, claim that it has. The remark in this regard from a judge of the Court of Sessions of the Peace deserves attention. It is an isolated opinion, however.

> "A bunch of people are pleading guilty because the maximum is now 10 years. They would never have pleaded guilty if the maximum had been life imprisonment.... We have more pleas, I'm convinced of it, because the maximum penalties are reduced..."

As we have said, the parallel this magistrate discerns between Bill C-127 and the high percentage of guilty pleas does not seem obvious to most jurists we interviewed. They suggest different reasons for a situation that actually predates 1983.

It must first be realized that these pleas often originate in bargaining between defence and crown counsel. The crown representative may be prepared to reduce his sentencing demands on condition that the accused acknowledge his crime. Of course, any agreement between the two lawyers on the nature of the penalty must be confirmed by the judge in the trial.

Congestion in the criminal courts and too much work for crown attorneys create a situation that is altogether favourable for such deals. Defence lawyers have the advantage of lots of room to manoeuvre in these negotiations and the crown's offers are sometimes highly tempting, as related by a Sessions judge.

> "With the crown overloaded with work, with a judiciary to benefit... we get people who collect sentences they don't deserve, lesser sentences than the sentences they deserve, so that the case can go through and we can close the file. So the defence lawyers have the advantage in the situation and they leap at the chance to have their client plead guilty. This is an agreement they've made with the crown, an agreement that they would never have been able to make if the crown knew in advance that there would be all the time needed to prepare the case and plead it."

Quite obviously, avoiding the trial saves society time and money but, despite the unequivocal nature of this judge's remarks, it does not seem that the plea bargaining phenomenon is explained by this fact alone.

As the crown informed us, the courts recognize that the defendant publicly admitting his guilt is taking a first step towards rehabilitation. His plea would therefore allow the judge to show some leniency when pronouncing sentence.

> "Definitely, I give a good bonus when an individual avoids a trial and pleads guilty. You are going to have charges of incest, the guy says: 'I'm incestuous but I regret it,' and another individual is going to have a trial before a jury and he will say: 'My daughter is a bitch and a liar and a problem child.' If this last individual is found guilty, I don't think there is the same degree of rehabilitation, of remorse, social reintegration as an individual who publicly confesses his crime and says: 'I regret it.'"

There would be an added reason why crown attorneys favour an agreement on sentencing in the area of sexual assaults: a guilty plea prior to the preliminary inquiry or trial spares the victim the ordeal of testifying in court.

> "It's true that in sexual assault matters, we are perhaps going to be more tempted to look for a plea to spare the victim from coming... Personally, bringing in three policemen and a civilian victim to establish that someone got his car stolen, that doesn't bother me too much. Bringing in an eight-year-old child to testify twice about very private matters, that is more of a strain."

Some defence lawyers harbour grievances against the "legal machine," blaming it for applying pressure to extract a plea from persons accused of sexual offences. These defendants are particularly penalized, in cases where the complainant has to testify, with what one practitioner characterized cynically as an "amusement tax."

> "If the accused makes the victim testify in the preliminary inquiry or the trial, he has just picked up an added sentence, because the victim suffered prejudice by telling about these events. Even though it is the individual's right to have his trial."

Not all the defence lawyers we questioned share this view. The crown attorneys clearly rebel at the assertion. In no case, they assured us, would they call for punishment that they felt did not fit the crime.

> "I don't give [sic] a heavier sentence because the individual goes to trial. We begin with the just sentence: the just sentence, the individual who goes to trial gets it, but the individual who pleads guilty will get a bonus... I am prepared to take away some jail time..."

As for all the rest of it, in the view of the same sources, the usual rules of negotiation come into play and in this confrontation, each party holds cards...

8.2.4.2 Verdicts

Though unable to produce precise statistics, a number of interviewees suspect that recent years have seen a rise in the numbers of sexual cases ending with a guilty verdict in the Court of Sessions of the Peace in the Judicial District of Montreal. Some feel, however, that the increase is fairly slight, whereas in fact we noted a small decrease of three per cent. This sense of an increase might be explained by the growth in the absolute number of information brought, also noted by respondents, that we have already pointed out. On the other hand, the evolution of social morality in general and the attitudes of legal practitioners in particular have apparently contributed to this result.

> "I think that the voice of women is better understood in this sense. This has eliminated certain prejudices or certain stereotypes. I would be inclined to believe that there are slightly more convictions."

Some jurists see the Criminal Code amendments in Bill C-127 as containing added factors that bear on the rise in convictions. Reference is made to the new and less restrictive definitions of sexual offences and the amendments affecting some of the rules of evidence.

> "Since the charge is broader, we can actually convict more people for what occurred. At this time, more people are being sentenced who were acquitted before because of the constrictions of the law."

> "I would say that there are more convictions than before mainly because of the second amendment, the one on the victim's (sexual) behaviour. Not because the things that are not allowed any more are concealed so that innocent people risk being convicted, but because the whole feeling of the case works so that the victim maintains a dignity that, in certain circumstances, she lost before. ... It was no longer the debate: 'Did the defendant sexually assault that person?' That perhaps amounted to saying, roughly: 'Is that person worth convicting the defendant for?'"

From another standpoint, a good number of our interviewees stated that the types of cases showing the highest acquittal rate involve individuals who knew one another prior to the incident because they belonged to the same family, were friends, or knew each other in some other way. According to our quantitative analysis, these cases actually end more often with the defendant discharged or the charges dropped.

Finally, let us point out that our analysis of the interviews conducted with jurists did not enable us to reach a definite conclusion with respect to the rise or fall in the number of guilty verdicts pronounced by the Superior court in sexual offences. In fact, respondents' comments on this subject were altogether contradictory on this subject. Remember that at least one defence lawyer claimed that juries were slightly biassed in this area since they rarely exonerated individuals charged with sexual assault, a statement that was completely refuted by the Superior court judge consulted on this matter. In any event, the question is very hard to resolve because the Superior court hears only about 10 such cases a year.

8.2.4.3 Sentences

It is clear to most of the crown attorneys and judges we spoke with that 1983 marked a decline in the objective seriousness of sexual crimes. This apparently might be an unfortunate consequence of the legislator's intent to shift the main emphasis to the violence inflicted on the victim of such a crime. We were given the example of a sexual assault with vaginal penetration, but without violence other than the violence inherent in the crime itself. Before 1983, offences of this kind were dealt with in CrC s. 143 and punishable by life imprisonment. Today, under CrC s. 246.1, the perpetrator of this assault would be liable to a maximum 10 years of imprisonment. The situation displeases a number of these respondents.

> "I find it hard to see how ordinary sexual assault can be punishable by 10 years of imprisonment. I am somewhat in agreement with the judges when they say that it is as if this crime had been seen as less serious after the 1983 amendments than before them."

The same interviewees were also surprised by the legislator's sense of priorities in providing heavier penalties for offences that unquestionably have less dramatic human consequences than sexual assault.

> "I think sexual assault is more serious as a rule than robbery, and then they treat it in the Criminal Code less seriously than robbery. The objective seriousness of an ordinary sexual assault is the same in the Criminal Code as auto theft."

Accordingly, crown attorneys and judges call for heavier maximum penalties for sexual offences. In other words, they want the lawmaker to adjust the range of sentences to reflect the actual seriousness of the crime.

> "I would wish the maximum possible penalties in sexual assault to be higher. This is not to say that I'm out for the heads of defendants committing sexual assaults. I want to have the necessary manoeuvring room in unusually distressing, unusually sordid circumstances."

It is not at all obvious, however, that the Bill C-127 sentencing provisions have had a strong impact on actual practice. And if they have had an impact, its precise influence is not easily defined. In an earlier chapter, we saw that the number of prison sentences has risen since 1983.

For several years, then, the crown attorneys and judges we interviewed have been seeing a subtle variation in the severity of sentences imposed on sexual offenders, a variation that works in favour of the offenders. On the other hand, the defence lawyers we surveyed claimed that judges were showing more and more severity in this area, especially when the victim of the offence is a child. The same lawyers asserted that a guilty verdict in sexual matters will now almost automatically carry a prison sentence. One of them told us that a few years ago, it was possible to get a suspended sentence for a client found guilty of sexual assault with vaginal penetration. Today, the same person would find it hard to get off with less than two years in prison.

> "The only thing that stands out in terms of sentencing is that they are hitting and hitting hard. This is what I am seeing more and more, and I find it worrisome."

The data collected from the files do not support this concern. Defence counsel deplore what they believe to be a new attitude in the judiciary. They find it especially regrettable in that they do not see incarceration as necessarily the best remedy in every case and feel that other, alternative solutions might be preferred.

> "Rehabilitation seems to be last in line, although, especially in the area of violence and incestuous acts, it is requested even by family members. The wishes of the victims or family members are sometimes discounted. It's too bad."

Finally, let us point out that going by what a number of our interviewees told us, the criteria for fixing sentence have remained appreciably the same as before the reform. For example, the fact of vaginal penetration is seen by many judges as an aggravating factor, whereas an offence akin to the old indecent assault is less severely punished, even if some violence has been used. There are grounds to ask whether the exercise of judicial discretion in fixing sentences for sexual assaults currently reflects the spirit and philosophy of Bill C-127.

8.2.4.4 Appeal

From the comments on this subject made by the jurists we consulted, the first thing to keep in mind is that, in the area of sexual assault, the incidence of cases taken to appeal is fairly low. The questions raised in these proceedings are in fact more often questions of fact than of law.

> "It's unusual to actually have a point of law to debate on. Usually, the case turns on a question of credibility. So these are cases of the first instance, combat is really joined in the original trial."

What is more, none of the respondents reported any change in the percentage of cases referred to appeal courts after Bill C-127 was promulgated.

When cases with sexual content are referred to them just the same, the primary aspect on which the higher courts (and especially the Quebec Court of Appeal) have to rule is the appropriateness of the sentences ordered by the original judges.

The current tendency of the Court of Appeal in dealing with offenders seems to be to return to the traditional solutions (i.e., incarceration over therapy) and perhaps too, lengthen prison sentences. On any other aspect, we were told, few directives have come down from our Court of Appeal. A judge of the Court of Sessions of the Peace believes that we may be able to see in this an intention to enlarge the rights of certain defendants who, in exceptional circumstances, are prejudiced by the current legislation. These decisions, however, are somewhat marginal and would have no effect on the settlement of current cases.

> "If we looked at the range of all these exceptions that have been created by the courts of appeal in the last few years, to my mind, that applies to extreme cases. It does not create any guidelines for most of the cases before us."

The results of our quantitative study of the files certainly point in this direction.

8.2.5 Training given to jurists

What preparation do judges and lawyers get for confronting the complexities of sexual assault cases in which the human element is even more conspicuous than in other criminal proceedings? Is any effort being made in the legal community to introduce practitioners to this problem and acquaint them with the latest conclusions from medicine or the social sciences on its causes and consequences? Finally, is such training appropriate?

Put to each interviewee, these questions got us more or less similar answers.

8.2.5.1 Crown attorneys

The crown attorneys do not undergo structured training on the special dynamic of sexual assault. We were told that there are indeed a few conferences where this problem is discussed, but not all lawyers are invited to them and these conferences do not come within a concerted training policy.

Field training is, therefore, the prevailing mode and we were not given to understand that this situation should be rectified. What is more, some respondents went so far as to cast doubt on the value of training courses on the subject.

Finally, respondents feel that their level of knowledge (essentially picked up through practical experience) is altogether satisfactory and requires no further investment.

> "The people who deal with sexual assaults trained themselves through experience... most of the people doing a lot of them are people who could even give courses on the subject!"

8.2.5.2 Defence counsel

Lawyers acting for the defence seem scarcely better prepared for sexual assault cases than their colleagues from the crown.

At legal aid, they say, training is strictly legalistic. As soon as new legislation is passed, the lawyers are briefed on its ins and outs from an essentially legal standpoint. Apart from this, there are a few lectures and study days at the Quebec and Canadian Bar Associations.

For a more complete understanding of the dynamics of sexual crime, these lawyers too, whether practising at legal aid or in a private firm, would, therefore, rely on experience derived from practice.

8.2.5.3 Judges

One of the judges sitting on the Court of Sessions of the Peace told us that it is basic for discussion and exchange to take place among judges when new legislation comes into effect. In 1983, he and his colleagues attended a conference dealing with Bill C-127. However, the participants in this meeting seem to have focused primarily on the reform's legal ramifications. Since that time, a few meetings around this subject have taken place, with discussion again focusing on legal points like, for example, the influence of certain decisions rendered by the Supreme Court of Canada.

Must members of the judiciary be involved in the actual dynamics of sexual criminality? Some lawyers answered this question in the affirmative. These persons placed special emphasis on the need for judges to become acquainted with child psychology, particularly in a context of incest. Prejudices, mistaken but stubborn, are apparently current among those on whom, in the end, the outcome of proceedings depends.

A number of judges acknowledge that there is substance to this criticism and would welcome information sessions on this specific topic. Most, however, do not see the practical value of training that focuses on the phenomenon of sexual assault generally.

> "I do not see for what reasons the so-called sexual crimes should be dealt with differently. Listen, a crime is a crime! Are we going to make judges take special courses for homicides? A special course for fraud? A special course for armed robbery? A special course for obscenity? Of course not!"

8.2.6 Conclusion

Our intention in this final section is certainly not to go over each and every comment made by the jurists we interviewed. We think that these have largely been relayed in the 70 or so pages above ... However, it will be useful in closing to bring out the dominant ideas in the jurists' commentaries and then attempt a synthesis of these viewpoints.

The diversity in opinions prevents us, as the reader will have guessed, from coming to any clear and unequivocal conclusion concerning the balance and impact achieved by Bill C-127. It does seem to us, however, that lawyers and judges agree on two important points:

- at present and generally, the judicial handling of sexual offences is satisfactory;
- on more than one score, the 1983 reform marked an improvement over the previous legislation.

Quite obviously, these proposals were qualified by respondents, and in very different ways depending on whether they act for the crown or the defence or preside over criminal proceedings. Let us first look at the comments by crown attorneys.

8.2.6.1 Crown attorneys

Crown attorneys say that victims of sexual assault are treated with respect by the judicial system, but without prejudice to the basic rights of the accused. As far as Bill C-127 is concerned, they are particularly pleased with the new classification of sexual offences and the lawmaker's amendments to certain rules of evidence.

> "The present system is not perfect, but it is a system that is still very decent and I think that the amendments you are talking about have brought an improvement."

The actual impact of the 1983 reform would, nonetheless, be hard to estimate. Improvements have indeed been seen over recent years in the way victims of sexual acts are treated before the courts. To what extent, though, can this process be attributed to the new provisions in the Criminal Code? As was pointed out to us, changes in social behaviour have also played a large part in the shift in attitude among the those who work in the justice community. In Montreal, Bill C-127 seems in some respects merely to have confirmed existing practices.

From another standpoint, some significant shortcomings still remain. Virtually all the crown attorneys we questioned found the sentencing scale unsatisfactory and wanted the maximum penalties imposed by the legislator raised. Also pointed out was the public's general lack of understanding of the judicial system, especially when the crimes subject to proceedings were sexual in nature. This lack of understanding results in mistaken perceptions that are imperative to rectify.

> "Whether in terms of groups of victims, victim associations, parents, the social services, it's alarming to what extent people do not realize, don't understand what the Canadian penal system is, from the presumption of innocence up to the Charter, etc."

8.2.6.2 Defence counsel

Most defence lawyers we met also feel that the judicial handling of sexual offences is fairly satisfactory on the whole. As well, they consider certain components of the reform highly timely. However, they did express substantial reservations concerning both of the above proposals. A number of them are concerned that in the present context their clients may be the victims of injustice. Without categorically stating that the rights of persons charged with sexual offences are actually and generally being abused by the judicial "machine," they do see such an eventuality as a real danger. This apprehensiveness, they state, is justifiable for more than one reason.

First, they maintain that the amendments to certain rules of evidence may well put defendants in a shaky position. For example, because of the virtually total ban on the defendant's lawyer questioning the victim about her sexual history, some relevant facts will never be revealed to the court.

What is more, these same respondents feel, to make up for the abuses that women had to undergo in the past (especially when they were called as victims of sexual assault to testify before the courts), judges are now showing too much severity with the accused.

> "They easily bring out the instinct of the right, the lynch mob, people's spot justice, and they lack rigour and subtlety. Nowadays, personally, I think we lack this in terms of these crimes. I'm not saying that this is not the result of all the oppression and the whole underdog situation that women have known, both in their sexuality and in their family relationships. But I find that this could have been handled by going in the direction of traditional law."

Some add that the emotional treatment that usually distinguishes these cases is exacerbated by lack of strict standards in the media, which contribute to the creation of an unhealthy atmosphere that is liable to skew the debate.

> "His (the judge's) ability to accord the benefit of the doubt is not much. He would be afraid that his judgement might be reported in the papers... so he might be afraid of criticism and he's going to pay close attention before acquitting anyone. Oh, yes! They are getting stricter and stricter!"

Finally, some defence lawyers we met criticize the Attorney General for the lack of any consistent policy in this area.

> "The Attorney General should have a policy to be applied in this area, in the area of sexual assault. A policy which the Attorney General currently does not have.... To me, a policy

> involves an overall view of cases and the dispositions in such a case, of the regard shown the victim, which is not the case right now."

8.2.6.3 Judges

Lastly, the judges may be the respondents who displayed the greatest satisfaction with the performance of the judicial system following the 1983 reform. Most of them feel, in fact, that Bill C-127 is realistic, reasonable and a source of real progress.

> "I am very satisfied with the amendments. I am satisfied as a judge, as a jurist, as an ex-lawyer, as a citizen. I am satisfied at all levels. I find that the legislation we now have for sexual offences affords better or more reasonable protection to the legitimate interests of society and causes no major prejudice to people who may get charged."

Consequently, most judges surveyed feel that the defence lawyers, concerned that their clients might be unjustly wronged by the reform, had no basis for this concern. At least one of these judges, however, does not agree:

> "The amendments have been generally well received. However, after some time, we realized that there may have been too much concern for protecting the victim at the expense of certain rights which the defendant could claim to use in some cases."

Some other shortcomings in the Act might apparently also be liable to affect the judicial treatment of sexual assaults. Not all the judges necessarily agree, however, on the nature of the problems singled out.

To some of them, the range of sentences is the problem: the legislator was too lenient. To another judge, the new offence categories are deficient because they are artificial and in no way reflect reality.

Finally, some judges lament the Attorney General's lack of leadership and consistency in this area.

> "This seems to be a criminal policy by slogan."

8.2.6.4 Jurists and practice

In closing, let us recall that the jurists' impressions are often similar to the results from our analysis of the police and court records. The main areas of difference are the higher conviction rate and heavier penalties since Bill C-127 came into force. Our quantitative data do not support these impressions.

However, we must not lose sight of the fact that our statistical data collection ended with the year 1985, whereas the jurists were interviewed in early 1988. It may be that the lawyers, judges and attorneys saw changes in 1986 and 1987 that had not been apparent earlier on.

9.0 COURT OBSERVATIONS

Before attempting to produce a synthesis and analysis of what emerges from the 12 files which we studied in greater depth, we believe that it would be useful to reprint an excerpt from Appendix A of the contract explaining what was expected of us in terms of court observation, after which we will explain how we actually proceeded.

The following stipulations (pages 5 and 6) have to do with court observations:

"E. COURT OBSERVATIONS

The key questions to be examined in this component of the study include:

- What facts related to the case emerged during the preliminary inquiry?
- What preliminary motions were made by the Crown or the defence (motion for adjournment, exclusion of the public, ban on publication, exclusion of witnesses prior to testimony)?
- What information from the preliminary inquiry was introduced during the trial?
- What evidence did the Crown attempt to introduce?
- What evidence did the defence attempt to introduce (initial charge by the complainant, sexual history of the complainant with the accused or with persons other than the accused, the character of the complainant, etc.)? Were these questions allowed?
- What were the judge's instructions to the jury?
- What were the judge's comments on sentencing?
- Did the case establish a significant precedent?

The purpose of court observation is to collect, over a period of eight months, direct and primary qualitative and quantitative data on the roles of the various participants, evidence and proceedings in cases of sexual assault, by following proceedings through both the preliminary inquiry and trial stages. Cases begun but not completed by the end of this period are to be followed up. A trained observer will collect data on the type of case (for example, characteristics of the offence, complainant, accused, etc.), the nature of the charge (as laid by the police and on the final decision), preliminary motions, the trial and decision, appeals, precedents, and all other information relevant to the proceedings."

9.1 Methodological Approach

As we had indicated in our proposal in response to the Department's call for tenders, direct observation is an expensive approach, very costly in time and money and, all in all, not very useful, considering the limited data that can be collected through this and no other investigative technique. Observing all cases of sexual assault in a judicial district the size of Montreal would have called for a substantial investment which the department was not prepared to make.

It was agreed, however, that as on the other sites, we would proceed with a limited number of "court observations" using a more realistic approach, since we had neither the staff nor the time needed to be directly present for 12 cases heard during the observation period. For this reason, it was agreed that we would proceed with a selection of cases, listening to the tape-recorded hearings in order to fill out the Court Observation Questionnaire. This questionnaire is actually a translation of the questionnaire developed for the Hamilton study and passed on to us as a model by the department.

Concerning the case selection criteria, let us first state that we retained for study only those cases in which witnesses were heard. There is no need to expand on the reasoning that led us to this choice.... For the balance, we limited ourselves to giving preference to diversity in charges, courts and outcomes of proceedings. Adding more criteria to this list would have meant considerably prolonging the time allotted for the selection process, something that the constraints inherent in our mandate did not allow.

We began the hunt for relevant files by checking the annotated criminal rolls from May 1 to December 31, 1987. This enabled researchers to identify the cases in which sexual assault charges had been laid. The information in these documents, however, is fragmented. Basically, it indicates the hearing date, the names of the accused, counsel and the judge, the stage in the proceedings and the decisions made on this occasion. In a second phase, we had to refer to the computerized court records, which offered a little more information, to weed out our case list by cutting all those not meeting our criteria. Finally, a few visits to the office of the Clerk of the Criminal Court in the Montreal Court House enabled us to examine the written proceedings of our selected cases to see whether they really matched. To obtain 12 satisfactory files, the researchers had to look at some 87.

The files kept for analysis were taken from the court house shelves to be scrutinized in depth. Based on the data in them, the researchers filled in part of the Court Observation Questionnaire. Listening to the recorded hearings enabled them to fill out the coding grid.

In conclusion, let us state that the subject of our analysis was not the judicial process as a whole, but rather one of these two stages: the preliminary inquiry or the trial. We felt it appropriate to elaborate on this question in point 1)i) of the Interpretation Guide -- Court Observation.

9.2 Data Collected

We see no need to include the case histories for each case observed at this point.

9.2.1 Cases selected

As indicated above, observed cases were chosen exclusively on the basis of the nature of the assault involved and the procedural vehicle elected by the defendant, combined with the outcome of the case. The result was that 10 of the 12 cases involved ordinary sexual assault, either as a single charge or associated with such other charges as indecent assault and buggery, while two cases involved sexual assault with a weapon or causing bodily harm, both accompanied by charges of forcible confinement. Ten of the cases were heard before a judge of the Court of Sessions of the Peace, while two were heard before a jury in trials presided over by a judge of the Superior court. It should be noted that neither of the charges of sexual assault with a weapon or causing bodily harm was taken before a jury.

Of all cases observed, only one was heard by a woman judge and no woman acted for the defence, while in seven cases the crown was represented by a woman.

Coming to defendants and victims, we note that the proportion of female victims in the sample of cases observed (84.2 per cent of the total) tallies with the data from our quantitative collection (81.8 per cent of the total, according to Table 53), along with a clear overrepresentation of victims aged under 18 (71.5 per cent as against 47.7 per cent according to Table 51). All defendants were males, which tallies fairly well with what was noted in the quantitative data collection (98.6 per cent of defendants are males).

9.2.2 Motions presented

9.2.2.1 Motion for adjournment

We came across one case of a motion for adjournment of the preliminary inquiry because of the victim's absence (Case No. 1). This motion was granted after an independent witness gave evidence regarding the facts in the case, with the defence refusing to admit that Miss X, the victim cited in the information, was indeed the person described by the witness in his testimony. In this same case, this time at the trial stage with the victim absent (the third time the case was to proceed. On the first two occasions, it had to be remanded despite the victim's presence, due to the absence of the defendant), the presiding judge ordered the defendant discharged, citing the less than serious nature of the offence.

9.2.2.2 Motion for amendment

In none of the cases did the Crown alter the nature of the initial charges. In one case (Case No. 9), however, the crown made a motion to amend the indictment to make it consistent with the evidence regarding the alleged period when the offence was committed. From all the testimony together, it could be concluded that if the offence had taken place, it could only have taken place a year earlier than the period stated in the indictment. This motion was granted, but the case still ended with an acquittal. The presumed victim of the sexual assaults, which allegedly took place on numerous occasions over a period of several months, was the assailant's daughter. Her father had allegedly touched her, but the little girl could only give hearsay evidence, since she had no personal knowledge of the events but was merely reporting what her sister had told her about them. In cross-examination she admitted, however, that she sometimes told falsehoods and that her sister did the same. The sister, incidentally, was not heard as a witness. In view of such evidence, the court gave the defendant the benefit of the doubt.

9.2.2.3 Motion for exclusion of witnesses

It is clear from analysis of the 12 cases observed that the defence automatically requests the exclusion of witnesses whenever more than one person is called to testify for the crown. It also becomes obvious that judges grant these motions without the defence having to present any supporting argument.

9.2.2.4 Motion for publication ban or in-camera proceedings

Our observation of the 12 cases showed that whenever the crown moved for an order to clear the court for the victim's testimony or moved for a publication ban, the court granted the motion. Motions for publication bans were made in five cases (No. 2, 5, 7, 9 and 10). In three of these same cases, there were also motions to clear the court before the victim testified (Cases No. 7, 9 and 10). In-camera proceedings were also requested by the crown in another case (No. 3), and this was granted as well. The judge presiding in a jury trial, however, denied a defence motion to proceed in camera in another case (No. 5), justifying his decision by the public nature of the trial. Finally, the judge ordered the court cleared, proprio motu, in a case where a nine-year-old girl, a victim of an ordinary sexual assault, was called to testify (Case No. 12). The judge justified his decision by citing the victim's tender years.

9.2.3 Witnesses heard

9.2.3.1 General remarks

In all cases observed, except for Case No. 11 in which the defendant pleaded guilty at the opening of the preliminary inquiry, the crown's cases rested very largely on the victim's testimony. In one case (No. 1), the victim's absence resulted, first, in an adjournment of the preliminary inquiry and, second, the defendant's discharge as the trial began. It was also noted that police were rarely called to testify in these cases. This may be explained by the fact that in none of them did the crown attempt to place a confession made by the defendant in evidence.

In six cases, the defendant testified in his own defence (Cases No. 2, 3, 5, 6, 7 and 10). In four of these cases, one or more other witnesses were called for the defence (Cases No. 5, 6, 7 and 10). In a single case, a witness was subpoenaed by the defence without the defendant coming to testify (No. 9).

9.2.3.2 Witnesses under age 14

In only one of the cases involving victims under age 14 (Case No. 14, 6, 9 and 12) was a voir/dire used to determine the child's ability to testify under oath (Case No. 6). Following this voir/dire, the 10-year-old victim was sworn. However, we see an even younger victim (Case No. 12), a little girl of nine, giving evidence under oath with no questions asked concerning her ability to understand the meaning of the oath. It should be pointed out, however, that all cases involving testimony from children under age 14 were heard before Bill C-15, amending section 16 of the Canada Evidence Act in this respect, came into effect.

9.2.4 Analysis of the evidence

9.2.4.1 Victim's testimony

The total time taken by the victim's testimony varied considerably. If we exclude those cases (No. 1, 4, 8 and 12) in which the testimony we observed was given in the preliminary inquiry (the length of that can be much abbreviated if the defence elects not to cross-examine), we see that the victim's testimony at the trial lasted for 20 minutes at its shortest (Case No. 3) and 2 hours, 10 minutes at its longest (Case No. 10). Surprisingly, the complainant who testified for the briefest time (Case No. 3) was not the one who was spared the most by defence counsel. Cross-examination accounted for 18 of the 20 minutes taken by his testimony.

9.2.4.2 Objective of cross-examining the victim

In most cases, cross-examination of the victim was intended as an attempt to minimize her credibility. For this purpose, the defence brought out every discrepancy, however minimal, between her testimony and her previous statement at the preliminary inquiry. When circumstances allowed, a great deal was also made of her alcohol or drug consumption, sometimes to undermine her credibility in general and sometimes to attack her testimony about the incident in particular. In one case (No. 7), the objective of cross-examination was clearly to establish, if not the victim's consent, which could have been invalidated by her alcohol consumption, at least the defendant's honest belief that such consent existed. This cross-examination, lasting 19 minutes out of a total testifying time of one hour and four minutes, was crowned with success, since the judge in the trial acquitted the defendant based on the defence of error of fact. As the defendant and another witness had testified for the defence, however, it is impossible to isolate the relative importance of this cross-examination of the victim from all the evidence presented for the defence.

9.2.4.3 Evidence of the complainant's sexual behaviour

The crown received no notice from any defence counsel wanting to use CrC s. 246.6. However, our analysis of victim cross-examinations enables us to see that lawyers are generally complying with the ban placed on them by this section. In one case (No. 12), the defence asked the young victim (aged nine) if she had ever seen a naked man other than the defendant. It is hard to put this question in the same category as illegal cross-examination on the victim's sexual history. On the other hand, the 12-year-old male complainant in Case No. 14 was led to reveal that he prostituted himself to homosexuals, which explained how and why he had gone to the defendant's home. In this case, the cross-examination strikes us as being on the borderline of the area addressed by CrC s. 246.6.

9.2.4.4 Similar offences

In one case (No. 6), the crown attempted to present evidence of similar offences. It was admitted conditionally at first, but the court finally disallowed this evidence as not showing sufficient similarity to the acts with which the defendant was charged. As the defendant had testified in his own defence and had been cross-examined on his previous record for gross indecency and contributing to juvenile delinquency (under section 33 of the Juvenile Delinquents Act, since repealed), the court was particularly careful not to risk convicting the accused on the grounds that he was the type of person likely to commit the offence.

9.2.5 Decisions and sentences

Of the seven cases settled by guilty pleas or verdicts on counts of sexual assault (Cases No. 2, 3, 4, 5, 8, 10 and 11), we note that the court imposed prison sentences in five (Cases No. 2, 4, 8, 10 and 11), while in the other two the decision was a suspended sentence combined with probation, two years in one (Case No. 3) and three in the other (Case No. 5). In all cases, the court was very concerned with the deterrent aspect of the sentence. Oddly enough, in the case involving a suspended sentence combined with three years' probation (Case No. 5), it was this deterrent aspect that influenced the choice of this penalty over a brief prison term combined with probation, as suggested by the crown. By imposing this penalty for an ordinary sexual assault offence that, nonetheless, brought out the defendant's troubled relationships with the neighbourhood's adolescent females, the judge stated that he preferred suspending sentence to keep a sword of Damocles hanging over the defendant's head so that he would obey the terms of the probation order. Beyond the usual conditions, this order prohibited the defendant from being the only adult in the presence of young people under age 18.

In the cases of sexual assault with a weapon or causing bodily harm, the punitive aspect may also have come into play. In the first case (No. 2), the court sentenced a first offender to a year's imprisonment followed by two years' probation. In the second (Case No. 8), a three-year prison sentence was imposed, to be served consecutively to any other sentence. This was a case of sexual assault with a weapon involving an individual who had committed his crime while on parole. This person, who at age 25 was into his third penitentiary term for common theft and robbery, saw his parole revoked following the sexual assault that he had committed. This undoubtedly accounts for his guilty plea. The court acted on the joint suggestion of counsel and imposed a three-year sentence consecutive to any other sentence already being served by the accused, underscoring the need to protect the public. Before agreeing to the lawyers' suggestion, however, the judge insisted on hearing the victim to find out whether she had suffered any special trauma as a result. She had not, it seems, although she testified that she had moved in order not to see the defendant again. In addition, following her evidence, the judge made an order for restitution of the radio stolen from her by the defendant at the time of the incident.

Repeat offenders, on the other hand, receive relatively heavy sentences. This occurred in Case No. 1, in which the defendant, who had been found guilty of gross indecency five years previously, was sentenced to nine months in prison after six months' pretrial detention, all this in spite of the fact that he was suffering from a serious malady, Friedrich's ataxia, and had only a few years to live. Similarly, the defendant in Case No. 11, after nine months in preventive detention, was sentenced to a prison term of two years less a day. The court rejected the defence suggestion for a suspended sentence with an order for psychiatric treatment in a halfway house affiliated with the Pinel Institute. The judge, however, aware of the defendant's need for treatment and considering the determination he had shown to undergo treatment, agreed to pass a concurrent sentence on the two charges so that the defendant could remain in a provincial correctional institution.

9.2.6 Roles of the parties involved

There is nothing very special to be brought up in this connection, unless we refer to the reluctance of the police which was displayed throughout the proceedings related to Case No. 1. First, the delay between the commission of the offence and the suspect's arrest strikes us as exaggerated, given the fact that an independent witness had informed police of his whereabouts. The offence had been committed in September, 1986 and it was not until April, 1987 that the victim was invited to view a lineup. Next, the victim did not attend the preliminary hearing. Whereas the independent witness had been subpoenaed, the victim had not. In answer to the judge's questions about the interest shown by the victim in prosecuting the matter, the investigating officer stated that he was expecting to hear from her shortly. A remark like this suggests that no effort had been made to contact her. At the trial, when the victim's absence was noted again, it was again mentioned that she had moved. This inclines us to think that no one took the trouble to notify the office of the clerk of the court of her change of address.

We may also feel some astonishment at the motion for amendment made by the crown in Case No. 9, the aim of which was to make the dates mentioned in the charge coincide with the dates when the offence would probably have been committed. It must be acknowledged, however, that this was an especially difficult case, even for a crown attorney with experience in incest and similar cases. The presumed victim was, in fact, a severely malnourished child, and the actual complainants were her mother and a social worker. The father, who had custody of the child, was charged with repeated touching. The little girl, who had been placed in a foster home and then with her mother following these allegations, had no personal knowledge of these events which, according to her testimony, took place while she was asleep. The child's testimony was based solely on what her sister had told her. Moreover, since there had been no preliminary inquiry in this matter, the crown had been unable to verify the substance of the charges and, in particular, its ability to prove them, just as it had been unable to detect the error that had crept in as to the period when the offence might have occurred.

9.3 Conclusion

We cannot conclude that the cases we observed are a faithful reflection of our findings from the quantitative study of the court records. The fact is, as we have indicated, that the choice of cases was not left to chance. Our researchers felt it best to select cases that reflected as faithfully as possible the nature of the charges generally laid, the outcomes of the judicial process and the court to which this type of case is usually referred. However, the fact that of the twelve cases observed, two involved sexual assault with a weapon or causing bodily harm may constitute, just like two cases before a jury, an overrepresentation of these cases.

Concerning the ages of defendants and victims, the fact that the observation results deviate from those from our quantitative analysis is accounted for by our not taking the age factor into consideration when choosing these cases plus the fact that, from the outset, our sampling was not intended to be representative. In view of the very small number of persons involved, we cannot draw any conclusion whatsoever from these discrepancies. Furthermore, since the goal of our court observations was to analyze the conduct of a hearing with witnesses, the age of the opposing parties did not strike us as being a distinctive factor. Remember that the cases we observed all took place before Bill C-15 came into effect with its special provisions regarding the testimony of young complainants.

As for the conduct of the hearings, our observations correspond quite faithfully to the results we obtained through quantitative analysis of the files, in terms both of the nature and the frequency of preliminary motions. The same goes for the importance of the victim's testimony in the outcome of the case.

We were able to note the importance attached to the victim's alcohol or drug consumption in her cross-examination by the defence lawyer. The sample is much too limited, however, for us to conclude that this has a decisive impact on the outcome of the trial. Moreover, we must deplore the fact that this hypothesis cannot be further verified by the quantitative method because the information is a rarity in the files.

Finally, the diversity of sentences imposed in cases involving guilty verdicts or pleas echoes our findings from the quantitative data.

10.0 INTERVIEWS WITH MEDICAL AND SOCIAL WORKERS

After briefly introducing our methodological approach, we will bring out and analyze the comments collected from the various medical, social and counselling personnel involved.

10.1 Methodological approach

Since we have already indicated the general drift of our qualitative data collection, this section will touch only on the special aspects of our inquiry with these workers.

10.1.1 Interview guide

The objectives in interviewing these workers were to find out about their activities as well as the organizations to which they belong and, as far as possible, gather statistical data on their client groups; record their views concerning the judicial and medical/social handling of sexual assault victims; find out how they feel about the various legal and paralegal workers involved; and, most particularly, ask their impressions of the impact of Bill C-127.

The interview guide expresses these concerns.

10.1.2 Choice of interviewees

We first made a list of existing resources for adult sexual assault victims in the Judicial District of Montreal. These are the Montreal Centre for Victims of Sexual Assault (Metro CLSC), the Mouvement contre le viol/Anti-Rape Movement, the Hôtel-Dieu Service for Victims of Sexual Assault and the Montreal General Hospital's clinic for the same group.[1] In tandem with these direct services, there is also a round table on sexual assault bringing together workers and principals from a number of agencies. Other resources provide services specifically for children who are victims of incest or other forms of sexual abuse. As incest was excluded from our research objective, however, we ruled out studying these aid centres.

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[1] The Laval Aid Centre closed its doors for lack of adequate support before we were able to contact its principals. In Montreal, a new service was launched in May, 1988, and was thus not part of the population studied.

10.1.3 Interviewees chosen

We made contact with the workers or administrators of the various agencies dealing with victims of sexual assault. We asked for interviews with these people, all of whom agreed.

On the francophone side, we met with three workers from the Metro CLSC (CLSC is the French acronym for a Local Community Services Centre) Centre for Victims of Sexual Assault, the head of the Mouvement contre le viol (Anti-Rape Movement), and the woman doctor as well as two workers from the Hôtel-Dieu Service for Victims of Sexual Assault. We also questioned the woman in charge of the sexual assault round table. On the anglophone side, however, there was only a telephone interview with the person in charge of the clinic at Montreal General Hospital.

In all, interviews were conducted with nine respondents, some of whom were seen twice.

10.1.4 Initial contact

All those contacted were already aware of our study on sexual assault. It was sufficient to explain that the research was being done by the University of Montreal on behalf of the Department of Justice, Canada with the consent of the Quebec Department of Justice, and that the project was being conducted all across Canada.

10.1.5 Interview structure

Most interviews began with the following, fairly straightforward opening statement:

> "We are doing a study on sexual assault. We are trying to assess the impact of the 1983 amendments to the law dealing with sexual offences. We would like to have your opinion on the effect of these changes."

In two cases, however, we asked first for information on the organization's client group and operations.

The interviews lasted an average of one hour. They were conducted between March 1 and April 15, 1988. The telephone interview took place a little later, in May, 1988.

10.2 Data Collected

The results of the interviews conducted with the main workers in our area from the health system and social services are given in this chapter. The first section brings out the perceptions interviewees have of their clientele and the views they expressed on victim resources. We will then go on to describe the role of those who work on the fringes of the legal system. Afterwards, we will analyze workers' attitudes and impressions about Bill C-127's provisions. Lastly, we will present suggested changes in the current system as offered by these workers.

10.2.1 Workers' perceptions of their clientele

None of the centres we contacted had been gathering detailed statistics on their clients and services. Workers' perceptions, however, correspond quite closely to the data collected in the quantitative components of this study.

For example, they stated that their clients come from all age groups. In one centre, they even talked about a victim aged 83. Minors are rare, no doubt because of the youth protection network. Workers estimate that the majority of their clients are between the ages of 20 and 40, figures that are confirmed by the statistical data we collected.

These clients are all females. In fact, the medical and counselling clinics have had to deal with women only. At least, this is what emerges from statements by workers in these places.

There was mention in one aid centre, on the other hand, of getting telephone calls from assaulted males, but these were extremely unusual cases, according to the workers. As a rule, when men phone it is mainly because they were victims of sexual abuse in childhood. Young boys have come in on occasion, but they have been referred to other aid services. Those served by the victim aid centres, then, are almost exclusively female.

The victims' socioeconomic status seems to be fairly varied. The fact is that sexual assault victims are apparently found in all classes of society. The designated medical clinics, however, deal mainly with poorer women, most of whom are on the job market. According to some hospital workers, most well-off women would not report an assault. If they did, we were told, police would bring them to the hospital. The more financially privileged victims would have themselves examined by their own doctors and meet a psychologist of their choice.

The aid centres apparently receive victims from all social and ethnic backgrounds. One worker did state, however, that most of the victims dealt with were students and our own study supports this impression.

Those using community services appear to do so either immediately after the assault or else many years later (this is particularly the case with incest "survivors"). In the designated hospitals, given their vocation, the dynamics are different. These clinics deal almost exclusively with people who have just been assaulted.

As far as the nature of these assaults goes, we may suggest that they are violent in almost all cases. According to the workers, there is always a verbal attack coupled with physical brutality. Even if the victim has not been beaten up, she has been roughly pinned down or pulled by the hair and, in most cases, threatened with a weapon. Virtually none of the assaulted persons expected to come out of it alive. Some assailants have been known, however, to take the presumed acquiesence of a passive victim for consent, and take the liberty of calling her afterwards for a date.

As for the assailants, most are apparently known to their victims. Indeed, the fact of knowing the assailant apparently deters a good many victims from laying charges. According to some workers we interviewed, women assaulted by someone they know are afraid he will come back and carry out his threats. When the assault is committed by a stranger, the victim is more comfortable about laying charges with police. These offenders who sexually assault victims who they do not know very often look altogether respectable, apparently men you would never find suspicious.

According to our respondents, sexual assailants are all men. They apparently come from all social backgrounds and are usually young. The average age of assailants is around 30. One octogenarian grandfather was reported, however, for sexually abusing his granddaughter. Such cases remain the exception.

10.2.2 Workers' opinions of victim resources

Our research was an opportunity for these workers to express their views concerning the practical value of victim aid services and the effects of round tables. These resources themselves will not be described here, since this was done in an earlier chapter. Only the opinions voiced will be subject to analysis.

10.2.2.1 The main resources

Remember that the designated Montreal hospitals for dealing with sexual assault cases are all located in the downtown area, as are the victim aid services, if we exclude the centre that was set up after this study had ended.

This makes them hard to reach for sexually assaulted persons living in more outlying areas. The workers feel that more centres are needed. Almost all of them need more trained staff to respond to client demand and, especially, more funding to ensure their survival.

Finally, there seems to be close cooperation among the various services, and even a degree of interdependence.

10.2.2.2 The Round Table

The medical and social workers we met feel that the round table on sexual assault is necessary and highly useful. It is the forum for exchanges among involved persons from various organizations. It can provide the relevant information for satisfactory action. Familiarity with other views on how to relate to victims seems essential.

Additionally, meeting people at the round table keeps these workers in touch with all available resources. This information that enables them to refer their clients to the right places.

Round tables on sexual assault exist in other big cities, but not in sufficient number. Our respondents feel that more should be set up in the regions.

To sum up, the round table

> "... enables us to exchange our common problems, organize among ourselves, keep in contact with the others, talk about our work, talk about it with colleagues and others."

10.2.3 The role of workers who serve on the fringes of the justice system

In describing the resources, we have already noted the services available in the aid centres. In the interviews, we wanted to explore in greater depth the role these workers play as their clients go through the legal process.

The interviews show that the main roles the workers play are giving information to victims, collecting evidence with the medical/legal kit, and assisting victims in getting through the legal process.

10.2.3.1 Informing clients

This service seems to meet one of the victim's fundamental needs. All centres provide it.

> "If it's an assault that has just occurred, we will explain all the situations to the victim, everything that has to be done after a rape. If she decides to lay charges, she has to know what is going to happen so that she can make her decision."
>
> "You inform the victims gradually."
>
> "Usually, when the victim arrives, we go over with her what can be done, and that often means giving her information on the legal process, especially when she is hesitant. But we don't always go into detail. Often, the trial will be several months after the assault, so we aren't going to talk about it the first evening or the first day, but along the way."

As things move along, other questions may arise. Hence, the need for a well-informed staff and good contacts with the justice system.

Do the workers inform victims about the legislative changes affecting sexual offences? Apparently they do, but only when clients have decided to lay charges with police. These victims are told that the law has changed and informed about some aspects of these changes. For example, the therapists tell the complainant that there should not be questions about her sexual behaviour in court, and that she will be considered as a victim of a criminal act. Most of the workers tell victims who are bent on laying charges that the law has improved, but warn them that they will still have to face many difficulties during proceedings.

As for clients who are determined not to lay charges, most workers we met felt that they do not want to know about the amendments in Bill C-127.

10.2.3.2 The medical/legal kit

The designated hospital services make full use of the medical/legal kit in all cases where there has been a complaint to police. The kit is apparently used in two out of three cases. The workers prepare all phases of the medical/legal examination and fill out the forms. The doctor in charge carries out the examinations, completes the medical portion and signs the documents.

There are questions about the practical value of the medical/legal kit. Most of the workers we met think that it is virtually useless to the court. They feel that it would be important to know how much it is actually used in court.

> "The kit seems very important in the trial, useful to the court. But we would have to know exactly how much it is used."

> "The kit may be useful when there are physical assaults that the doctor could note Otherwise, the kit itself, I don't really think they make much use of it in court."

The medical/legal kit should be used as evidence; otherwise, they see no value in it.

> "It has to do something, or else let it go."

One respondent even thinks that the medical/legal kit does not get to the court in some cases.

> "There is no procedure to make sure, from beginning to end, that everything goes to the right place: from the victim's samples to the crown attorney. It's a big problem and personally, I find it somewhat disgraceful, because these tests are fairly awful."

The same interviewee gave us her view that the kit was brought in to encourage sexual assault victims to lay charges, even if they are afraid to testify.

> "There was a mistake in the beginning. They said that the kit could spare women from testifying. That was a downright lie, a glaring error because that wasn't true. It wasn't possible."

Moreover, some wondered why the results of a survey on the use of the kit in court were still confidential and unavailable.

An even more basic question came up. The medical/legal kit came into use shortly after Bill C-127, with its goal of emphasising the assault-related, rather than the sexual aspect, of an assault. So what is the kit for? Has the spirit of the law not been understood?

> "They are trying to change the definition of sexual assault so as not to put the focus on the sexual act as such. You finally realize that their concern is whether sperm are present or not, and the kit is used to look for sperm. It's as if it was continuing to serve the old mentality, the old law. If sperm were present, there was an assault, that's what they're looking for."

In short, these workers cast doubt on the medical/legal kit's practical value and now appear to be going through a questioning phase.

> "The value of the medical kit? That still has to be proved to me! I still don't know if it's good for anything."

10.2.3.3 Accompanying victims

By accompaniment, we mean all measures involved in the progress of individual cases: decision to lay charges, preparation to testify and information on proceedings, escort to court and post-judicial follow-up.

Decision to lay charges

As the movement to help victims of sexual assault got under way, researchers and workers denounced the justice system's discriminatory attitude towards women who were abused because they were women. It was the period when victimology was described as "the art of blaming the victims" (Holmstrom and Burgess, 1978). The first aid centres advised victims against laying charges, since the workings of justice were seen as a second victimization. We wanted to find out what these workers were thinking today. We went on the assumption that the staff of these centres were still turning victims away from the justice system.

The data we collected invalidate this assumption. All the people we talked to describe their centre's policy as one of neutrality. Victims are not urged to lay charges, but they are not discouraged either.

> "We feel that the decision is up to them. We don't discourage them from doing so, but we don't push for it."

> "I think we are really trying to be as neutral as possible. We try to help her make the decision rather than push her one way or another. We respect her decision."

In short, they help victims to make an enlightened decision, but never press them one way or another. They do not attempt to get women who have decided not to lay charges to change their minds. These workers put no pressure on victims, for they feel that laying charges will throw the complainant back into the trauma she experienced at the time of the assault.

Respondents emphasize that victims may have a number of reasons for not reporting these sexual acts: fear of reprisals by the assailant, being acquainted with the assailant, lack of support from the people around them and, sometimes, bad experiences with police.

> "They are incapable of laying charges because they have no support from the people around them, because it is someone they know or who is close to them, and there will be repercussions at home and they're afraid of that. In spite of what we think, half of the assaults are done by people they know, so there are far more consequences."

> "Some of them have had experiences with the police some years ago or else they have heard about other girls who were not believed. They don't care to be treated the same way by the police."

When the client pushes for an opinion from the worker, the worker is inclined to disclose her personal views. And this is where there is no consensus.

> "Personally, I'm going to tell them: 'You want my opinion, I'd lay charges.' But I don't force her, I don't use any pressure."

> "Our watchword: let the women decide. And I agree. You give them the pros and cons. But to my mind, I'd tell the women not to lay charges unless they are 15 or 80 years old and virgins and have strong evidence. Personally, I don't give advice except in major cases like that."

From the statements of those questioned, however, it appears that most of the women who come in do lay charges.

> "I can't speak for the other workers, but of the eight women I have dealt with, five or six have laid charges and these were all cases of assailants who were strangers."

Over half (54 per cent) of the clients of the aid centre we studied had reported the offence to police before coming in. After the visit, 15 per cent of the ones who had not laid charges decided to do so. In short, the workers' comments are broadly consistent with the quantitative data collected in a centre.

Preparation to testify

This preparation seems to boil down to informing victims who have decided to lay charges about the judicial process in general. If there has to be a preliminary inquiry or trial, more details are provided as needed.

The workers do not play the lawyer's role. Even if they had the necessary expertise to do so, it could well work against the interests of their clients who are witnesses in the court, not defendants. Like the police, they can only offer general recommendations to the victims whom they are advising. They must refrain from swaying their testimony. Their role may be limited to prescribing or not prescribing a tranquillizer before the hearing.

> "There is the example of the girl who asked me if she should take a tranquillizer. I told her: 'I don't know. You'll be calmer, but on the other hand, if you're asleep that won't help.' She decided to take

> one to get some sleep. Afterwards, she told me that it might have worked against her because she looked too calm."

Accompaniment may also take the form of research on how the case is going or mediation with the criminal justice system.

> "Let's say a victim has a problem at some stage: she wants to know, for example, where her case stands. But she can't manage to get the information. No one has called her, she doesn't know. Now I know that I can call someone who will have the information. If I know what the procedure is, I can call to find out how my client can go about getting the information."

Accompaniment to court and post judicial follow-up

Aid services provide victims with accompaniment to court. It is apparently difficult, however, to accompany victims at every stage in the judicial process. More staff would be needed for this.

> "I think that there has to be support so that the women feel accompanied, not only right after the assault, but also in terms of the follow-up in the court system. I think we'd need more people and more time."

According to the workers we met, victims need better support in their efforts more than they need information. We were told in one centre that accompaniment was rarely provided in spite of the importance attached to this type of assistance. In view of the postponements and adjournments, it calls for considerable time and staff availability, and the centre has few resources.

> "If one girl goes to court and the other is interviewing, who's going to answer the telephone, deal with new clients? That job is too complex, we can't hand it to volunteers."

It will be remembered that some jurists complained of the lack of legal skills among aid centre personnel.

10.2.4 Workers' evaluation of Bill C-127

The responses to this research topic may initially seem disappointing. Let us emphasize two facts, however. In the first place, not all of our respondents experienced the system prior to Bill C-127, since they began working in a centre after those legislative amendments had been passed. Nevertheless, they conveyed their views on the Bill's intent and the effects they were able to see. Secondly, they are specialists, not in the law, but in medical treatment or counselling.

10.2.4.1 The legislative text

According to the workers we questioned, the new definition of sexual assault has its positive side, but also its negative effects.

On the one hand, they recognize that the new Act is an improvement over the old one. For example, they talked about the appropriateness of assessing the seriousness of a sexual assault in terms of the violence involved and no longer just in terms of penetration. They also stressed the progressive move of limiting the admissibility of the complainant's sexual behaviour as evidence. Concerning this amendment, some workers assume that the right to place the victim's sexual behaviour in evidence no longer exists. A woman's ability to lay charges against her spouse is also seen as an improvement.

Some respondents, on the other hand, indicated that the elimination of the word "rape" in the new provision for sexual offences has somewhat downplayed the seriousness of the assault. In addition, most workers maintain that the new definition of sexual assault ignores its long-term aftereffects. In their view, an ordinary sexual assault may traumatize the victim just as much as an assault with a weapon.

> "Often, it's the weapon that impresses people, whereas being told, 'I'm going to kill you,' will leave just as many scars as being threatened with a knife. Maybe it's attaching a bit too much importance, really, to what is visible."

Beyond this, the courts are apparently placing the emphasis on the physical dimension of the assault, especially when the consent of the victim is at issue. Some workers commented, in fact, that a lot of cross-examinations dealt with the victim's efforts to demonstrate refusal, as if passivity were synonymous with consent.

> "It's fairly unusual for the defendant to say that it wasn't he. Instead, he will say that the person consented. At that point, they will try to work on the extent of violence and threatening gestures. They will try to ask the victim how she showed that she did not consent... I find it hard to understand how they think that there was consent unless there is evidence to the contrary. That's an odd way of thinking, and I find that it's often based on that."

Another respondent maintains that the sexual aspect is still very much present in examinations, although less strikingly so because it is more subtle. In spite of the improvement, she feels that the basics are really unchanged.

> "It is not a matter of sexual behaviour any more and this is already a big step, but it is the subtler questions that often place the victim in a position where she can't defend herself any more."

Most therapists we questioned feel that clearing the court is not always a service to the witness-complainant. In fact, they emphasize, the victim is alone at a time when she often needs support.

10.2.4.2 Specific effects

According to those workers who were familiar with the system prior to Bill C-127, more charges are being laid since the reform. They are not sure, however, whether this increase should be ascribed to the new legislation.

> "I think that the amendment came at the same time as a lot of other things. Everyone is more informed about violence against women. I think there is more general awareness. It's hard for me to know whether this is due to the Bill. Women don't necessarily know that the law has changed."

It also seems that charges laid against assailants who are known to their victims are now more common. Also, persons assaulted by relatives or acquaintances are coming for treatment more often than before. These impressions are consistent with the results from our quantitative study (Part Two of the report).

As for sentences, some workers find them more lenient since Bill C-127.

> "When you look at the sentences, I wonder if it isn't all just one big farce."

Most of the workers we met with feel that the new legislation has not brought all that much improvement to the quality of the victims' experience of the justice system. As a rule, they think that sexually assaulted persons dealing with the judicial system do not get the consideration to which they should be entitled.

10.2.5 Workers' views of the justice system

As noted above, these workers find it hard to assess the impact of Bill C-127. As far as the present situation goes, however, they are very talkative. In their view, the justice system is still treating sexual assault victims badly, and for two reasons: first, mentalities and attitudes are evolving very slowly in the system and, secondly, the very basis of our criminal justice system works against fairer treatment for victims.

10.2.5.1 Persistent prejudices

We know that special rules of law have long been applied to sexual assault. Victims have had to be of chaste character, practically shouted their refusal of consent and reported the assault at the first opportunity ... in short, be in a position to demonstrate their innocence.

Coming on top of previous legislative amendments, Bill C-127 asserts that the victim of sexual assault is no longer to be seen as any guiltier initially than any other victim of an attack.

Yet in the view of our associates, the law may have somewhat outdistanced changes in thinking.

As far as the police are concerned, our respondents feel that they are not immune to prejudice, at least not the older ones. In their view, younger police officers are more sensitized to the problem of sexual assault. Apparently, preconceptions regarding the sexually assaulted still exist. Some police officers display an obvious lack of understanding of the impact that a sexual assault can have. According to some workers, these same peace officers do not always give the victim credence and even detective sergeants are sometimes far removed from what the victim is going through.

> "With the police, we have all sorts of experiences, some pleasant and some less pleasant. The younger ones are generally better, they are more sensitive, more flexible. The younger ones are generally more proper, but they are not free of prejudice either. Being policemen doesn't suddenly make them understanding."

To others, it is the police training that is inadequate. They maintain that some peace officers should be more in touch with the needs of sexual assault victims.

> "... this is important because police are the victim's first contact."

There are also attitudes that need changing, among lawyers as well as police officers. One worker assured us that there are crown attorneys who disbelieve the victim and, in some cases, relate poorly to the complainant. Some go as far as to sabotage questioning. To them, true sexual assault does not exist.

> "If the prosecutor doesn't believe the victim, it's all over. I saw one who sabotaged all the questions. She had decided that it was a made-up story."

As several workers see it, evidence is the all important thing: some members of the justice system are seemingly indifferent to what the sexual assault victim is going through.

> "Certain prosecutors sometimes have only one thing on their minds. Is there any evidence? What is a good witness? They somewhat forget what the person, the witness or victim, is going through; they're somewhat indifferent."

In such conditions, the therapists admit that it is hard for them to urge a victim to lay a charge.

> "It's hard to say to a woman that she should lay a charge and that the more often charges are laid the better things will be, if, on the other hand, she is treated like a dog in the manger."

This last comment suggests that the justice system does not always give the sexually assaulted a good reception. At a second meeting, some interviewees told us that they were thinking seriously about discouraging victims from laying charges. These therapists feel that the sexually victimized undergo a second victimization, so poorly are they handled by the legal system.

They generally feel that victims of sexual acts are still viewed with some suspicion.

> "They are questioned as if they were highway robbers when they're not criminals at all, but crime victims. A victim of sexual assault is still viewed very, very cautiously!"

What is more, it would seem that the credibility of the assaulted has not really increased over the years. In other words, according to our respondents, there is a portrait of the perfect sexual assault victim.

> "She's a married woman with children and her husband is out; she has bruises over her entire body and she was at home, in her house."

If a girl has been to a bar or gone hitchhiking, her credibility will be seriously challenged in court.

> "I think things have improved, but basically there's no change. The court system is so concerned that there be no possible doubt that there's no more room for basic common sense."

In short, most interviewees tell us, the negative attitudes of certain members of the justice system have a ill-fated effect on the long-term mental health of sexual assault victims.

10.2.5.2 Foundations of the justice system

The criminal justice system is fundamentally flawed, in the view of workers with long experience of it through the victim. One of them told us:

> "In fact, there is a basic problem. We've been thinking about it for some time and I have come to the conclusion that, in fact, the defendant is presumed innocent. He can't be seen as a witness to the event, whereas the victim herself is seen as a witness."

Obviously, a defendant can never be compelled to testify against himself. And unless he decides to testify, he is protected from any cross-examination. The same is not true for the victim, who participates merely as a witness and is, thus, subjected to cross-examination that is often distressful in spite of the restrictions imposed by the lawmaker.

This is how most of our interviewees spontaneously reacted to the problem of victims' lack of information. The victims do not know what is going to happen. The workers see it as absolutely basic to brief witnesses on the proceedings, as is done with defendants. To inform the victim who has to testify, our respondents feel, the crown attorney could meet with her for at least twenty minutes, preferably a few days before the hearing, to give her the basics and, especially, go over the case with her.

> "The defendant has met with his lawyer and been told what to say and how to say it. But the victim is often taken into some little office next door and told that all she has to do is tell her story. She's all on edge and she has no chance to meet the crown attorney beforehand and talk about her case, get reassurance. They don't take time with the victim."

Cross-examinations are viewed by most of our interviewees as threatening for witnesses. They challenge the basic right to cross-examine the victim, most particularly when the assailant does it himself.

> "When the victim is testifying, why does the defendant's lawyer have the right to cross-examine? She doesn't have the right to cross-examine! And if the assailant doesn't have a lawyer, he has the right to cross-examine the victim himself. It's absurd."

It emerges that victims generally need stronger support throughout the process. One worker maintains that sexual assault cases should be handled with the same consideration as murder cases, and given the same time.

No doubt because of all these factors, victims are afraid to testify and, in the view of our interviewees, they are pleased and relieved when the defendant pleads guilty.

In short, the proceedings throw the victim back into an extremely difficult situation over which she has no control. The workers feel that there are ways of avoiding this fresh trauma and have considered some solutions for doing so.

10.2.6 Workers' suggestions

All through the comments by our interviewees, suggestions cropped up for improving the way the justice system handled sexual assault victims. Most have nothing to do with Bill C-127. Nonetheless, we will present the basic elements of these proposals as developed by our respondents.

They are unanimous in calling for police teams specializing in sexual offences. Peace officers should be made more aware of the devastating effects of sexual assault.

They also suggest that sexual assault cases be handled solely by teams of crown attorneys who are sensitive to and interested in this type of case. Crown attorneys who do not relate well to a complainant should refer her to another one. The victim herself should be able to change crown attorneys, somewhat as a client can do with any other professional if she does not get along with him.

Victims are apprehensive about proceedings and especially testifying, if they are called to the witness stand. And the prospect of seeing the assailant again adds to their stress. It is, therefore, suggested that the defendant be concealed behind a kind of screen when the victim is testifying. It is also suggested that all victims be informed that they do not have to give their addresses in the presence of their assailants. What is more, the assaulted party should be seated to testify without having to ask to be seated.

Cross-examinations are frequently seen by most of our respondents as threatening. They feel that victims should be prepared for cross-examination. They, therefore, recommend that training sessions be organized for centre personnel. Workers would then be able to brief victims better about their participation in the judicial process. And when cases are heard in camera, these same workers should be able to gain admittance ex officio to the court.

As the persons we consulted have said, most victims of sexual assault feel the need to convey, especially to the judge, the experience they have gone through and its effects on their lives. This should always be possible through their deposition.

When it comes to sentencing, there are great discrepancies and our interviewees feel that a consensus should be reached on the type of penalty to be imposed on sexual offenders. One worker even suggests an alternative to imprisonment, which in her opinion, does not rehabilitate the prisoner. Here is what she advocates:

> "Let the rapist be exposed socially as a rapist."

The last proposals are more general and have to do with pointless travel by victim-witnesses. For example, when a case is delayed or postponed, or if the defendant decides to plead guilty, the victim should be told in advance, given at least 48 hours in some cases. The workers interviewed feel that this measure would occasion no prejudice at all to the rights of the accused. What is more, they add, the state would economize as people would not have to be compensated for coming to court.

In short, most of the problems pinpointed by the medical and social workers we met are capable of resolution. The sexual assault victim's lot can be improved; all we need is better use of available resources and greater understanding of the repercussions of a sexual assault. Recognition of the rights of victim-witnesses, especially the right to be informed and the right to be heard, should transform the quality of their experience of the criminal justice system.

10.2.7 Conclusion

We met only nine workers in formal and tape recorded interviews. Since they were specialists in the area of sexual assault and more specifically with its victims, however, our interviewees had many apropos observations and suggestions. For the moment, we will summarize them under four headings: aid centres' clientele and activities; perceptions of the justice system; the impact of Bill C-127; and suggestions for improving the treatment of victims.

10.2.7.1 Aid centres' clientele and activities

Even though few services -- hospital, community or other -- were keeping statistics at the time of our investigation, the workers seem to have a very exact intuitive perception of the characteristics of their clientele and the services requested and provided.

It is important to remember these workers' scepticism about the practical value of the medical/legal kit and their ambivalence as to the expediency of advising victims to cooperate with the justice system. To move through the judicial maze, victims apparently need support (this was the police view as well), but the aid centres, with their unstable and limited funding, are not in a position to give victims enough assistance as they go through the court. They may also lack the necessary training.

10.2.7.2 Perceptions of the justice system

Even though they believe that the justice system has improved over recent years, the workers still see the process as unjust and threatening to victims. Why, they ask, urge the victim to lay a charge when she will be abused or, at best, ignored?

10.2.7.3 Impact of Bill C-127

The workers we met say that it is impossible for them to assess the impact of Bill C-127. Their approval of the law's underlying philosophy is virtually unreserved, but they cannot make the direct cause-and-effect connection between the new legislation and the recent corrections made to the justice systems's handling of victims of sexual assault. These changes may simply be attributable to a change in thinking in society and in the legal community.

In the workers' view, the amendments concerned with evidence are highly appropriate, but they have not actually improved the victim's situation because of the continuing insinuation that she should demonstrate her innocence (e.g., nonconsent, spotless sexual history...).

Finally, they feel that the seriousness of attacks has been minimized, for the lawmaker has not considered the long-term aftereffects on abused persons.

10.2.7.4 Suggestions

As we have seen, the workers voiced numerous suggestions for improving the judicial treatment of victims. These suggestions have to do with:

- worker training;
- setting up specialized police and prosecution teams;
- improving the material circumstances for testifying;
- support for the victim through the process; and
- recognition of the victim's right to be informed and heard.

Some workers even suggested that the very foundations of the justice system needed an overhaul.

11.0 INTERVIEWS WITH VICTIMS

A brief look at our methodological approach will be followed by the presentation and analysis of statements from the sexual assault victims themselves.

11.1 Methodological Approach: Data Collection

Since we have already outlined our methods of qualitative analysis, this section will deal only with those aspects that are specific to the direct investigation of victims of sexual assault.

11.1.1 Interview guide

The purposes of our interviews with victims of sexual assault were to collect information on the characteristics of the parties to the offence and on the assaults themselves; sound out victims' experiences and impressions with respect to the judicial process and medical and social resources; and determine their attitudes to Bill C-127.

11.1.2 Choice of interviewees

The basic selection criteria for our interviewees limited the population to adults. Additionally, to avoid rekindling old traumas, we focused our search on the recently assaulted group. Our victim identification was based on diversity rather than representativeness. At the outset, we had planned to conduct fifteen interviews with victims. In this group, we wanted to contact victims who had reported the assault and some who had not, as well as victims who had gone through the entire judicial process, partly gone through it or not gone through it at all. And all this in various circumstances: the nature and seriousness of the act, characteristics of those involved in an incident of sexual assault...

The search for victims was not without its problems, for we were absolutely determined not to let our inquiry become a second victimization. We made use of the following sources: the Montreal Urban Community Police Department, the Mouvement contre le viol (Ant-Rape Movement), the Metro CLSC Centre for Victims of Sexual Assault and the Hôtel Dieu Service for Victims of Sexual Assault. The representatives of these organizations all agreed to cooperate with us and said that they were prepared to try to convince some victims with whom they had been in direct contact.

Since the victimized generally go to the police, we made oral and written requests to the Montreal Urban Community Police Department authorities. The department agreed to cooperate. We were put in contact with the chief of a busy station who was to act as our middleman. He issued a general advisory to all stations for the investigating officers, who undertook to contact the victims. Constant communication was set up between the station chief and a member of the research team. These contacts extended over a two-month period. We must say that relations were excellent. Because of constraints connected with certain events that monopolized police manpower, or refusal by victims, they managed to get us only three names. These three persons were contacted and two of them refused to be interviewed for personal reasons.

As for the aid centres, these had been approached at the beginning of our research and we had prepared a document for their clients. This resource yielded us very little. Only one aid centre referred a victim to us and we were unfortunately not able to interview this person for our research because the case came under another judicial district.

The bulk of our sample came to us through the workers in the Hôtel Dieu Service to Victims of Sexual Assault. The workers from this hospital, in fact, gave us the names of eight people and all of them agreed to meet with us. These victims were anxious to convey what they had experienced and cooperate in the project.

We also appealed to a crown attorney who deals with sexual assault cases. There was no reply to our request concerning the possibility of getting victims' names.

In addition, we made an appeal to the student population through a notice posted on the bulletin board in the University of Montreal law faculty. There was no response to this notice.

The other four persons contacted were known to team members.

As can be seen, the quest for victims was fairly strenuous. It should be mentioned that, with the numerous problems we had with finding people who would agree to be interviewed, we were forced to revise our basic criteria. The age of 18, required at the outset, was lowered to 17. Our efforts were spread over a period of more than three months. Despite our many problems, we managed to contact the 15 victims. As will be seen, our sample is not as varied as we had wished. We do feel that it is fairly interesting, however, considering the information gleaned by inquiries of other interested parties and the results of our compilation of the quantitative data.

11.1.3 Interviewees chosen

At the outset, we had set ourselves the objective of 15 interviews. In fact, we asked 15 persons for interviews and 13 agreed. However, two interviews could not be carried completed because the victims did not keep their appointments. After two attempts to meet with these women, we decided not to press. In all, then, 11 individual interviews were conducted in due form.

The subjects we questioned are all women. We found no sexually assaulted men. The ages varied from 18 to 53, but most of them were under 25. At the time of the assault, however, two victims were aged 17. With one exception, all these women were on the job market at the time of the incidents and almost all were living with a spouse.

We find a wide variety of circumstances in the sample. For example, the assaults occurred in the victim's or the assailant's home, in the street and even in the woman's place of work. Most attacks were violent. The victim was either struck by hands or fists, pulled by the hair, roughly pushed, forcibly confined, strangled, or threatened verbally or with a knife. One or more of these acts figured in all assaults, and all of them in some.

Most of the victims were interviewed less than a year after their assaults. In two cases, the events took place two years previously and, in one case, the rape went back to 1976, some 12 years previous.

With three exceptions, the assailant was known: he was a relative, friend, spouse or ex-spouse. All were young men, most of them under 35.

11.1.4 Initial contact

Beginning with the telephone contact, we introduced ourselves to respondents as researchers. The research project, we told them, deals with sexual assault and is being carried out at the University of Montreal on behalf of the Department of Justice Canada. Both organizations consider that it is important to broach the subject to the victims themselves and find out what their impressions of their treatment by the legal system were. We also told them that, if they did not wish to do so, they were not obliged to talk about the assault itself. In addition, they were clearly informed that all information would be strictly confidential and their anonymity was guaranteed. Having made appointments with our interviewees, we went to meet with them at the agreed time and place.

11.1.5 Interview structure

As the ideal was to speak with our subjects in a normal setting, almost all our interviews were conducted in the victim's home, with one respondent preferring another location.

The interviewer took the time to talk with the victim for a few minutes before beginning the interview, and this brief time was always enough to establish a climate of confidence.

As soon as the informant was ready, the interview began and lasted 45 minutes on average. Interviews were done between April 1 and May 11, 1988, and began with this preamble:

> "As I was saying, we are doing research on sexual offences. We are trying to find out how the justice system is handling the victims. Maybe you could begin by telling me about the events surrounding the assault, as you think best, and we'll go from there."

The victims who agreed to meet with us had a great deal to say and communicated fluently. In almost every case, the conversation extended beyond the interview itself and was often an opportunity to get additional information for the study. It should also be mentioned that all respondents spontaneously offered cooperation in future if needed.

11.2 Data Collected

Even though all the victims interviewed talked to us at some length about how the assault had affected their lives and their families' lives, we will be emphasizing the ways in which the judicial, legislative and health/social services systems responded to these assaults.

11.2.1 Direct consequences of the sexual assault

Every person we met related an initial shock and a prolonged state of agitation arising from the assault. Most often, they spoke of a sense of powerlessness, of fear, heightened suspicion, shame. Also mentioned were the secondary effects on married or family life, financial losses, physical injuries.

On the whole, our respondents' comments confirm the results of previous research in Quebec and elsewhere on the repercussions of sexual assault (Baril, 1983). We explored the theory of the "second victimization" administered by the intervention process. The following sections deal with this.

11.2.2 Encountering the criminal justice system

This section outlines victims' experiences of sexual assault and their impressions of each stage in the criminal justice process, beginning with the complaint to police and going to the end of proceedings.

11.2.2.1 Police handling of the complaint

In every case, the assault was reported to the police. Who reported it? Was this a complaint? How did the police react? How does the victim view police attitudes and behaviour? What was the result of the investigation? These are the questions we will answer.

The report

We might think that a sexual assault victim's initial reaction would be to denounce the act to police. But such is not always the case. In general, victims seem hesitant about doing this. The decision would seem almost always to be made under the influence of those around her.

> "When I got to my neighbours, I called my mother and my sister but there was no answer. They told me: 'What are you doing? It's the police you ought to be calling.' I said: 'Oh, yes, you're right.' I called the police and when they came, they said: 'You're going to lay charges against him.' I was there: 'Should I?' The loss of confidence, you'd say you're not capable of making a decision without someone telling you: 'Yes, you should, yes.' I was like a little girl."

Sometimes, the victim does not even think about it. Someone does it for her or urges her to do it.

> "The first telephone contact, I didn't make it myself, it was my husband."

> "When it happened, I went to the shop next door, the man there called the police."
>
> "When I got to work, I said: 'I've just been attacked.' They said: 'We're calling the police.' I said: 'No, I don't want to call the police, in any case not here, not right away, I don't care for that.' I worked for about an hour and my nerves gave out, I couldn't do any more. I said: 'I have to go, I'm going to drop.' I got here on foot and called the police."

The victim may be physically incapable of reporting the occurrence to police.

> "I had a memory blackout, that is I found myself half naked and a taxi driver saw me and then he notified the police."

There have been very few surveys on the source of the report to police. As far as we know, Shapland, Willmore and Duff (1981) were the first in the field. The results came as a jolt to the official version of the reasons for reporting. In almost 60 per cent of cases (the sample was 278 victims of various crimes), the event had been reported by someone other than the victim. Previously, Holmstrom and Burgess (1978) had found that in over half of the cases of rape committed on adult females, it was not the victim who contacted the police.

Our data support the findings of a number of studies, but they do not enable us to identify any specific scenario for sexual assault cases. Our examination of the Montreal Urban Community Police Department files revealed that 48 per cent of reports had been made by someone other than the victim.

The charge

We may wonder why the police do not lay charges themselves in cases of sexual assault, as they do for armed robbery, for instance. We do know that, until very recently, in cases of violence within families, the police left it up to the victim to bring an information. For the past two years, police officers have had to report these abuses regardless of the victim's wishes, even if they feel that she will not willingly testify.

When it comes to sexual assault, the police seem to persist in consulting victims before referring the matter to the court.

> "The police advised me to lay charges. But they told me the consequences: that I would have to go to court and testify and that could take a long time. I didn't hesitate for a moment."

It all happens as if the sexual assault was a civil matter and the parties involved could elect to bring proceedings or not.

It seems that a person's social circle plays an important role in the decision to lay charges or not. In fact, most victims vacillate between the two alternatives. In spite of their hesitation, most of the victims interviewed laid charges personally and in some cases a relative acted on their behalf. On occasion, police or hospital workers urged the assaulted party to lay a charge.

Often, fear of the consequences was what caused the most hesitation.

> "There was all the impact that it would have had. I said to myself: 'If I make a complaint, if I tell my husband, I'm going to have to lay a charge, what will be the result, police, the court?' I was very scared. If you ask me, that's what stops victims. I think that is almost as traumatic as going through rape."

Also mentioned as feelings at the time are anxiety about possibly confronting the assailant, fear of potential reprisals, or else unwillingness to relive a threatening and traumatic situation. Yet most respondents talking about anxiety also stress the importance of reporting the occurrence. They emphasize the need to protect their own and others' safety.

Police reactions

When they answer a call, what do the police do? The first thing mentioned is transportation to hospital.

> "The police took me to hospital. Anyway, I was even hesitant about going to hospital, I was too shaken up, in a state of shock. I didn't even know any more, I thought they would take me to the station, I was so confused. I said to them: 'Catch the guy right away instead of taking me to hospital.' But for them, the priority was to get me to the hospital."

> "When the police arrived I was all nerves and they said: 'We're going to send her to hospital, that's the most urgent thing.'"

When the situation is serious, the victim will be taken to hospital by ambulance.

In one particular case, police seem not to have followed the instructions issued a few years ago, according to which the victim was to be driven to a designated treatment centre before the investigation began, to the letter.

> "It was the month of July, I was frozen. The police arrived and they took me to the station to begin with, I don't know why. I let them go ahead, more or less. But so very nicely, taking me by the shoulder... making me feel safe..."

If the assailant is a stranger and the victim has been touched but does not require any special treatment, she may be driven straight to the scene of the assault.

> "They told me: 'We're going back to the place where it happened to see if there are any signs.' We went back there."

When medical care is required initially, the investigating officers may take the complainant back to the scene of the assault a little later on.

> "The investigating officer who was in charge of the investigation, I found that hard, took me back to the place the next day to find the underwear. It was something I didn't like, but it was compulsory in fact."

Some respondents said that they had gone to the police station to identify the suspect from photos.

> "The police called me to the station and showed me a pile of photos."

In one case, they made a composite shot of the assail-ant before showing the photos to the victim.

> "The same day, when I got out of hospital, they took me to the station, because the image was still fresh in my mind. They had me do the composite photo, it didn't look anything like the guy as such. Then they showed me some more photos."

Two victims speak of the written version of events.

> "They gave me paper and a pencil and they said: 'Here, you're going to write down everything you remember.' And I did."

This same woman was also asked by the investigating officer to report what the assailant had said.

> "He told me: 'This is very important, because if someone else is attacked and the same things are repeated, we can say that it's the same guy, if he did the same things and said the same things."

When the statement was made out, the officer gave the complainant a file number and told her to call the station if she ever saw her assailant again. Note that this victim had not recognized the suspect from photos. Only two victims managed to identify their assailant.

In the cases where the assailant was known to the victim, the police arrested him.

> "When I laid the charge, they arrested him. He spent a night in jail and the next day he went to court."

It appears from the victims' comments that the police, although they are generally seen as very sympathetic, do not always adhere to the instructions that they have been given.

Victims' impressions and views

More especially with regard to the ability of police to move quickly, we note a high level of satisfaction.

> "They are very quick when you call them, five minutes and they're there."

Most interviewees emphasize their appreciation of the police attitude; for them, the initial contact was positive.

> "There were no prying questions, they understood right away. The officers, contrary to what I had been told, were very empathic."

> "When the police arrived, I was surprised how I was treated. I expected an examination, you know, used to hearing about people being hassled by police... but it was during the week when they were doing a lot of publicity for women, my timing was right. I was well treated by the police."

Initial relations between police officers and victims seem to be excellent. The assaulted parties were treated with much respect and understanding. It is later on that relations may turn sour. For example, a complainant expressing disappointment with the over-hasty reaction of the investigating officer states:

> "I was in hospital, there was a detective sergeant waiting for me. The first contact with this policeman put me off a little because right away when I went into the room, he asked me if I wanted to lay charges. I said: 'Wait for a bit, I'll see, I'm going to get some care, give me time to turn around."

Some are even sharply disillusioned with police when an officer does not provide the promised support. Such was the case with this victim:

> "The detective sergeant I met encouraged me a lot. He told me: 'A lot of women let it go.' You know, he encouraged me. I was so surprised in court when I saw that he was cold. You're alone all of a sudden."

Nevertheless, the victims were satisfied with their initial police contact. They were dealt with in kindly fashion by police officers, who came quickly, made them feel safe and took them to hospital.

The current handling of sexual assault victims seems to be quite different from the old approach, however. One respondent, e.g., assaulted by three men some 12 years ago, reports that the police officers she approached refused her statement.

> "They didn't want to move. There were three of them in the office... but: 'Oh, no, we don't deal with that. You get nothing out of going to court, you'll lose at any rate, then you'll have a whole load of problems to handle.' It's as if I'd gone after it, since I had been drinking. I let it go. They influenced me, but if it had been only me, I would have dragged them into court."

This same woman feels that the police attitude would be different today.

When they lay charges, victims are setting the judicial process in motion, but they are generally unaware of this fact. They are not familiar with all the consequences of a complaint. They do not necessarily know that they will be required to cooperate with the criminal justice system. Sometimes, they are not even aware that they may be called to appear before the court. On these specific points, most police officers seem to be briefing complainants about procedures. On occasion, the victims contact the investigating officer themselves to get information about the case. Respondents mentioning that they had been informed by police appreciated the attitude shown them.

11.2.2.2 The preliminary inquiry and trial

As a rule, victims have little knowledge of the judicial process and it is sometime hard to know exactly what stages were reached in proceedings. Because of this, we will make no distinction here between the preliminary inquiry and the trial. Note, however, that the cross-examination in the preliminary inquiry seems to have been less painful for victims than the cross-examination in the trial.

Not all of those questioned went through the courtroom experience. Several assailants pleaded guilty, in fact. But in one specific case where the suspect denied any guilt, the victim saw her charge thrown out. In spite of her illness, this person wanted to carry the matter through.

> "Personally, I didn't go to court because the doctors told me not to go. I was too sick. I think the worker called to say that I was too sick, that I couldn't go. I think that at that time, they let the charge drop. I think that's what happened, they didn't do anything."

Complainants who were called to appear before the court waxed eloquent on the subject. This section presents these victims' impressions of their judicial treatment. We will be looking at giving testimony, clearing the court, the attitudes of the system's representatives, and reactions to the outcome of the process.

Testimony

In most cases, the police had warned the complainant that she would probably have to testify. Most victims interviewed were not thrilled by the prospect, and sometimes they did not even contemplate this possibility.

> "At the beginning, I informed myself and a lot of people told me: 'Probably you won't be forced to go and testify. In cases like that, they don't force the victims to testify.' I was glad not to have to testify."

Victims learned that they were being called into court by means of a subpoena or a telephone call. In one case, the call was made to a relative of the complainant. Because the recipient forgot, the message did not reach the witness in time. This interviewee did not know who made the call, but she thinks:

> "... that it would have been the detective sergeant's job to say: 'Give me a phone number where I can reach you,' speak to me himself. I don't think he did his job as he should have. I was late getting to court; they'd been waiting for me a good two hours."

Before being called to the witness stand, the victims were all in a state of nerves. Their anxiety seems to have stemmed largely from fear of being unable to go over the events without losing control, or to give an accurate rendition of their story.

> "I was also afraid of losing control of my nerves, and from that, drying up, being unable to speak, not being able to say anything."

On occasion, the anxiety was prompted by the idea of seeing the assailant again.

> "At the beginning, that really got on my nerves, I was afraid of confronting the assailant, that was the biggest thing. I was terrorized."

> "When I was at home, before going to testify, I would often ask myself: 'Are they going to shoot me or what?' I was in a state of shock."

From what the respondents say, we can also see that witnesses find lack of information and preparation very worrisome.

> "I asked myself how to get out of it, I was scared."

> "The criminal, on the other hand, gets hours of briefing."

As we have seen, the prospect of testifying produces more or less active fears in those called to the stand. Is this anxiety justified? It seems to be, since most interviewees said that they found the experience painful and even traumatic in some cases.

> "Personally, I felt completely humiliated. I was in a state of shock for two days after testifying, I didn't leave the house, I had a lot of resentment."

> "In rape cases, the person is depressed already. She is weak, and I don't think justice takes that into account. For example, being confronted with our old statements, the defence lawyer with the notes from the preliminary inquiry and he tried to get me to contradict myself. Personally, I think there was a context at that point, I was still suffering the humiliation."

One person complained that she had not been allowed to tell the full story of her case.

> "I found that in a rape, the facts can be very compromising. I found that I had to explain more."

One interviewee confided to us that her testimony probably worked against her because she appeared too self-assured.

> "Maybe you have to cry, give them a show. That's what I personally think today. I tell myself that I maybe should have been shaking, all in tears, no! That isn't my style, I have control of myself.... Someone who tries to be solid, someone who tells the truth and isn't afraid to do so... maybe they're not used to seeing that... not maybe, I say yes. I realize now that if I had exaggerated, if I had a little crisis, if I had put a bit more into it, he might not be on probation."

In short, the interviewees' comments show us that victims are apprehensive about testifying. A number of factors contribute to this anxiety, and in most cases the experience proved extremely distressful. One of them summed the experience up in this way:

> "I think that they place tremendous responsibility on the victims to prove the charges and basically you realize that it doesn't look like more is admitted than necessary."

The victim has the sense of getting nothing in return for the heavy burden she takes on, over and above the trauma of victimization.

The evidence

Even though it is not pleasant to have to go over the facts surrounding a sexual assault, cross-examination is the most distressful part for the victim. Some interviewees feel that, in their cases, the entire defence was based on their presumed consent.

> "... it was to tell me that I had invited him, that it is I who had invited him for sexual intercourse. That was quite beyond me, I said 'no' three times..."

> "His defence was based on my consent. For myself, I know that consent can take many forms. It's a sure thing that if you have a rifle in your face you're going to consent but fast."

One victim states that the defence lawyer tried to prove that she had consented to the sexual act because she had been consuming alcohol.

> "He tried to blame it on the drink because I had loss of consciousness and lost my self-control two or three times."

In another case, there was apparently an attempt to prove masochistic behaviour on the victim's part.

> "He was trying to bring out the fact that I was a masochist, so I was consenting to intercourse on that basis."

This same complainant reports that the defence made a great issue of her morals, and she finds this attitude unacceptable and abnormal.

Another interviewee states that they tried to downplay the assault by attributing the charge to a thirst for revenge.

> "He tried to minimize by case by telling me: 'You're having your revenge because you felt verbally humiliated and that angered you.'"

In short, these women felt that their credibility was being strongly challenged and in such a situation they say they were shocked and, above all, powerless.

> "The law was made like that, you can't do much. That's for sure. But I find it deplorable that women are always challenged when it comes to assault."

Finally, only two victims made reference to the medical report, but this evidence seems not to have been very relevant in their cases.

In-camera

Facing the miserable prospect of the witness stand, most victims asked to be heard in camera. The judge generally granted this to those who asked for it. A hearing in camera was, however, refused to one victim who specifically requested it. She admitted that she did not know why she was refused.

> "I asked to be heard in camera and I didn't get it.... I told the detective sergeant that I would like to be heard in camera. He told me: 'Yes, I'll ask the judge.' He left ahead of me and I don't know what happened."

In addition to feeling afraid to testify, all the witnesses found it embarrassing to tell their stories in front of a crowd that was probably thirsty for excitement. Some complainants remarked that it was not the presence of their near and dear that worried them, but the curious onlookers.

In spite of embarrassment, two interviewees stated that they did not want the court cleared for their cases. One of them emphasized that she saw a chance to disclose the truth to everyone and especially to be heard. The other interviewee stated her ideas on in-camera hearings very clearly, a different viewpoint, indeed, but quite interesting.

> "Personally, I didn't ask for it and it wasn't to sensationalize. If I didn't want to ask for it, it was because I felt that by asking that the court be cleared, that protects the defendant and basically I feel that, for myself, I have no reason to protect him. I feel that I am playing the assailant's game when I ask to be heard in camera, because it almost amounts to saying: 'I'm ashamed of what happened.' Basically, sure it creates shame, but I should not be ashamed! He put me through something and it is he who should be ashamed."

11.2.2.3 The justice system workers

All the victims who appeared in court remarked on the attitude of the court workers and were very forthcoming about their experiences.

The crown attorney

Most of those questioned complain of the lack of contact with the crown attorney. They would have liked a meeting prior to the hearing. Victims felt a need for reassurance and particularly for information.

> "It wasn't because I needed more help or whatever, but it seems to me that I would have felt more solidarity with her. I would feel more involved in my case if there were meetings, being better informed, knowing more of what to expect..."

> "It's already very stressful, a situation like that; in addition, you are stressed because you don't know what is going to happen, you don't know what questions you are going to be asked..."

Some of them had a chance to meet with the crown attorney about 10 minutes before the hearing. For all the lack of time, victims appreciated the contact. One of them mentioned having made the crown attorney's acquaintance the day before her testimony, and the interview was beneficial.

> "It helped me to know that the crown lawyer trusted me. She knew I wouldn't panic. She knew that I was able to put up with such or such a thing. Contact with the crown lawyer is very important."

Most of the victims we met see the crown attorney as the lawyer who represents them and who, as a result, should attend to their, the victims', defence. As we said in the first chapter of this part of the report, it is sometimes the police officer who tells the victim that the crown attorney will be acting as her counsel. And when they realize that the crown attorney is not being supportive enough, victims show great disappointment.

> "I didn't feel supported, even my lawyer told me when she came in: 'Listen, you had better be very sure of what you say, this is serious business and you don't fool around with that.'"

> "At one point, she called me and told me on the telephone: 'If you are telling me any lies, you're better off telling me the truth because I'm going to turn around and take you into court.' For myself, I began turning upside down, saying:

> 'What am I going to do, I'm at the point where even my lawyer is telling me that I'm playing around with her.' I really didn't take her... the same weekend, I tried to commit suicide."
>
> "I'm sure that he was trying to catch me out. In any case, I didn't feel that he was on my side at all, not at all."

Victims seem to have a poor understanding of the crown attorney's role. Expectations are great and seldom met. Because of this, assaulted parties have great and sometimes dramatic disappointments; they have the impression that they are being victimized for the second time. They are reluctant to be treated as mere witnesses in their cases. They find that they were not the major actors on the scene, but mere cogs in the criminal justice machine. One interviewee expressed this very clearly.

> "The crown told me to my face: 'You're a witness, not a victim,' very roughly, arrogantly..."

In short, sexual assault victims feel abandoned, and they all consider that:

> "the crown attorney could be closer to the victim."

Most interviewees feel that the crown attorneys are sometimes lacking in zeal.

> "The crown attorney just sat there... she didn't put in her two cents.... Not a word; total silence. It was as if I had been there all by myself."

Someone who knew the crown attorney's role sees a solution to change this perception of indifference.

> "Let us pay a lawyer for ourselves, let's go and choose a name that we'll pay... whom the judge knows, so that when he says something, it's true."

Finally, victims who had dealt with a male crown attorney would have preferred a woman handling the case. She would have been more aware and possibly more understanding.

> "I would have liked a woman. I would have preferred that, because a woman is more in touch, she has a body like my own. A man remains a man, they are less sensitive about those matters. They do their job, but they really don't care what you are feeling. I don't say that they are all like that, but for myself, from what I've been through... that's what I've been through."

The defence counsel

All victims who were called to the witness stand found the defence counsel's attitude tremendously antagonistic. Some of them even experienced harassment intended to undermine their credibility. Others said that they had been treated like defendants.

> "His lawyer was no slouch with his questions, you would have said I was the accused."

> "Personally, I didn't go there to have myself charged."

Given this situation, victims feel a need to justify and even defend themselves, but this possibility is not open to them.

> "There were times I could have yelled out, but you can't do anything."

> "I was stuck, I couldn't say what I would have liked to say... and he asks such specific questions..."

Some witness-victims saw the cross-examination as a method of undermining their credibility.

> "He was pushy, arrogant, he tried to discredit me in a number of ways."

In a fairly general way, the cross-examination emerges as troubling, painful, frustrating and sometimes traumatic for sexual assault victims. Although most interviewees know that the defence lawyer is trying to create a reasonable doubt, they find the procedure barely or not at all tolerable. One of them made this comment:

> "The presumption of the defendant's innocence has always made me think that he is innocent until proven otherwise and, in other words, I am a liar until proven otherwise."

When the lawyer for the defence is particularly aggressive, cross-examination further disillusions the complainant, as if justice were confusing her with the accused.

The judge

Victims also commented on the attitude of the judge presiding in the case, but remarks were fairly moderate.

Most interviewees who were called to appear in court feel that the judge was a cold, distant character. He seemed to take no part in what was going on in front of him. This image crops up in the statements by two of the women.

> "They had told me beforehand: 'If you are embarrassed or whatever while the lawyers are questioning you, answer to the judge.' At one point, I look at the judge and I didn't feel capable of answering him, he was too cold."
>
> "The judge was listening just to listen, you could see that everything was decided in his mind."

Finally, these victims think that this is probably a normal attitude for judges.

To the others, this is an approach intended to be protective. Moreover, this tendency in judges seems to reassure some victims.

> "The judge didn't have a pleasant manner, but he was understanding all the same. I liked that 100 per cent because when we went back in he said not to be on edge. Then he did not look in a good mood when I lost my control, he could have said: 'Stick to your testimony,' but he let me go on. I'd say that in that, the judge was proper."

Other participants in the justice system

As we asked no questions about other participants in the criminal justice system, victims barely touched on them. One of them, however, spoke at some length about the probation officer who prepared the presentence report for the defendant in her case. This respondent casts doubt on the officer's proficiency.

> "I don't know what professional expertise the probation officer had. According to me, he didn't have much since, you see, a professional.... You see that he is asking you questions about what he had been told before and he makes his report."

What is more, this same interviewee does not agree with the confidentiality of the report and is angered at not having had the right to look at it. Her remarks on this are very eloquent.

> "You don't have the right to see that report. I asked the prosecutor to let me see it and she quibbled with me. She said to me: 'You don't have the right to see it, it is strictly confidential. The accused has the right to see it, but not you.' The probation officer may have written any old thing but you don't have the right to check it. There is no one to check whether what I said has been misinterpreted, not even the prosecutor.... I've always asked myself what was in that report. You don't always meet someone who will understand your situation, who will understand that it is an assault. Maybe for the probation officer, sexual assault by your ex-husband is so much rubbish.... They call in the assailant, his parents, the child, all the people around him. The victim does not have the right... she is all alone! I'll be asking myself questions to the end of my days: what was in that report?"

This victim's comments are very significant. We do not know how many would echo them, however, because we did not ask for opinions on the other participants in the justice system. For this reason, our study cannot generalize this impression to the sexually victimized population as a whole.

11.2.2.4 Outcome of the process

Of those persons we met in individual interviews, two indicated that their proceedings were not ended. The ones who knew the outcome of the process told us about their reactions.

Confession of guilt or verdict

Some defendants pleaded guilty, and in these cases the victims said that they were delighted at not having to testify. In one case, there was plea bargaining.

Though the confession of guilt is a relief to complainants afraid of testifying, it arouses anger when there is an agreement with the crown to drop charges. Witness this outraged woman.

> "I said: 'By what right did you bargain without my having a say in it?' It's not logical. I'm the victim, and they're going to make court bargains like that, that should be completely outlawed... he should be judged for what he really did."

She does not understand the workings of justice and sees plea bargaining as a plot against herself. Furthermore, this woman, sexually assaulted and beaten by her ex-husband, rejects probation as a fair penalty for her assailant.

When it comes to defendants who have entered a plea of not guilty, the victims expected convictions. In cases that were concluded, however, the defendants were acquitted. The victims were hoping for a different outcome and are very disappointed with the judge's decision. We should add that all the trials took place before a judge alone. Obviously, the defendant decides on the type of trial, but the complainant may not be satisfied with his choice. For example, one victim commented that she would have preferred a trial before judge and jury.

> "I feel that there could be a jury, but there was none because the defendant decided not to have one. There were matters that were too compromising.... They really have to be sure before using innuendo because the jury has ears and they'll pick up the innuendo."

This other young woman, assaulted by a stranger, is indignant about his acquittal. She has trouble understanding what motivated the judge's decision.

> "... that came as a shock, having gone through all that humiliation for nothing... I can't do anything, it's the judge's verdict."

And this woman, assaulted by her husband, feels that justice is made for men by men.

> "Even when you are a client, the fact that you're a woman in a man's world, the man has more chances than you do of winning a case, just because he's a man, it's true."

According to one interviewee, the defendant's occupation influences the judgement.

> "Certainly it's impressive, a highly cultured fellow who speaks well, looks good. I think that does a lot."

And to her mind, there should be no mention of trade or profession, either the defendant's or the victim's.

Sentencing

Various studies (e.g., Hagan, 1983) report that victims make no effort to find out what sentence is imposed. In our own sample, however, we see a desire to be informed of the outcome of the trial. When they are not present in court for the judge's decision, complainants contact the investigating officer. The conviction of the perpetrator of the assault is of great importance for victims, since to them it means recognition of the injustice they have suffered.

Complainants whose assailants pleaded guilty commented at length on the sentences. Some remarks betrayed anger, others less so. On the whole, however, victims showed dissatisfaction with the penalty imposed. All of them feel that it was not heavy enough. Some even call for life imprisonment. This is the case of a young women who was attacked in her home by a stranger.

> "The sentence was not severe enough, leave it to me he would have had to the end of his days, a matter like that is not pardonable."

The others would have wished a lighter sentence than life imprisonment, but still more punitive than the one imposed.

With respect to detention, however, some interviewees were ambivalent. On the one hand, they wanted incarceration, and on the other they feel that jail does not rehabilitate people. They wonder whether the prisoner does not leave captivity more aggressive and will try to get his revenge.

The victims, in fact, are looking for protection and the justice system disappoints them when it does not provide any. We have seen that one of their reasons for laying charges was to ensure their own protection and that of other women. This concern is especially evident among women who were assaulted by an ex-husband and fear greatly for their safety.

> "They wait until he kills a woman and then they put him in jail, but it's too late."

These victims think that his impunity will be read by the ex-husband as permission to attack again.

> "That guy came out of it like that, full of confidence, just imagine how many others he'll beat up..."

To summarize, most persons subjected to sexual assault want their assailants jailed. They manifest tremendous disappointment when the assailant remains at large. Finally, the penalties do not seem to be satisfactory: victims find them too lenient. We cannot generalize from our sample, but the results seem consistent with those of a number of studies concluding that crime victims are usually not particularly bent on punishment, except for sexually assaulted women and parents of victimized children (see Baril, 1983; Shapland et al., 1984; Maguire, 1985).

11.2.2.5 Overall statement

Even more than the leniency of punishments, victims focus on injustices they suffered during the process. In short, their statements show disenchantment, disappointment and bitterness. In their view, justice lies outside the actual experience of sexual assault victims. Their images of justice are tarnished and their confidence in the judicial system is badly shaken. All in all, dealing with justice means taking a loss.

To this injustice is added powerlessness against the criminal justice system. Victims passionately want a chance to express the full dimension of the prejudice they have suffered. Additionally, they lament the lack of information and preparation to help them take part in the process. At the outset, they are urged to press the matter for a final decision and supported in their efforts by the people around them or by the police. It is later on that their satisfaction fades as the proceedings progress and they find themselves alone in a system to which they contribute without deriving any comparable benefit. According to the victims we questioned, the system focused on the defendants and leaves the victims to their own devices. The judicial system does not seems to give enough weight to the special nature of the crime of sexual assault.

Since complainants did not manage to obtain the justice they wanted, they see their efforts as pointless. Laying charges, therefore, loses all its attraction and, if they had to do it over again, most respondents say that they would think twice before getting involved in this process.

11.2.3 Victims' attitudes towards Bill C-127

The victims we questioned were not aware of the 1983 amendments to the law in relation to sexual offences. We, therefore, explained the amendments to them, generally as follows:

> Q. "I am going to describe them a little. Today, the emphasis is not on the sexual aspect of the assault any more, but on the physical aspect, the range of violence. It is desexualized, men and women may be charged with or be the victims of sexual assault. A spouse can charge the other spouse with sexual assault.
>
> "Also, the admissibility in evidence of the victim's previous sexual behaviour is more limited. In practice, there should be no more questions about sexual behaviour. Do you have any comments?"

On the whole, the women reacted favourably. In a previous section, we have already reported their views on hearings in camera and placing sexual behaviour in evidence. According to them, Bill C-127 is a step in the right direction, but they did voice reservations and comments on the definition of sexual assault and the treatment of the parties to the offence.

11.2.3.1 The definition of sexual assault

The lawmaker wanted to minimize the sexual dimension by placing the emphasis on the violent nature of the assault. Most of the victims we met, however, felt that not enough importance is attached to the sexual aspect of the assault. Most interviewees consider that the trauma resulting from this goes on and on, while that caused by the beating finally fades with time. Moreover, in the interviews, no victim made spontaneous reference to violence in her assault. Do they attach less importance to the physical aspect of the assault than to its sexual side? We may well assume so. It must be noted, however, that we met no victim who had been left with a serious physical handicap.

What comes out of the interviews is the humiliation and degradation connected with the sexual act.

> "After that, I went to take my shower, that's the first thing I did, I felt quite dirty... I went to take my shower."

Some of them even stressed that there was talk in their cases of discarding the sexual assault charge for a charge of nonsexual assault charge, an approach they found unacceptable.

> "I think I suffered more than just blows or threats or verbal assault. There is a bunch of things he made me do as sexual acts that, personally, I found unacceptable and this traumatized me tremendously, almost as much as the violence. My bruises lasted for three weeks, a month. The impression I have of that type of business is that it has repercussions at home, with my husband for instance... it is really something that traumatizes me.... I find that if they accept that, they accept a lot of things and I find that they just ignore them."

Above all, sexual assault must not be confused with vaginal penetration. Victims have the impression that the people in the judicial system see sexual assault simply in terms of vaginal penetration, whereas to them, there are many other elements to be weighed.

> "In a sexual assault, you can't just rely on the facts, because without fail, most defendants are going to be acquitted.... It's the psychological idea, how it is asked, how it is done, how it

> is required, what goes on inside your head. That's the important thing for me and it gets forgotten a lot in rape trials."

> "They seem to see this almost solely as vaginal penetration.... In some rape cases where there is no penetration, the lady must have an awful time proving that she got raped if there is no sperm sample.... I think if you don't have that, you can't prove sexual assault."

11.2.3.2 The parties to the offence

Remember that Bill C-127 allows husbands to be charged. In our sample, we had one respondent who was victimized by her spouse and another who was victimized by her ex-husband.

The victims who spoke to us after being beaten and sexually assaulted by the husband or former husband think that, when it comes to existing or terminated marital relationships, the defendant is either acquitted or has counts dropped. For example, a defendant who pleaded guilty to sexual assault on his ex-wife was given a suspended sentence after plea bargaining.

> "It is the assailant who is defended to the limit. For the victim, it's: 'do what you want, get yourself out of it.' I am really dissatisfied. Because it's your ex-husband who assaulted you, oh well, that's the pattern, that's not serious. But when you look at it, it's worse when it is your ex-husband, because you don't trust many people after that..."

As for the other interviewee who was assaulted and beaten by her husband, she too expressed great disappointment in the functioning of the system: her assailant was acquitted.

> "I felt that they were doing their work on the basis of principles. Everything was decided in advance, they weren't listening to me.... I was the one treated as the assail-ant, getting the stern looks, and when it was all done in court, the detective sergeant shook him by the hand."

The immediate reaction of these victims assaulted by their husband or ex-husband was to challenge the system that let them down.

> "I just got home when I realized a lot of things. I said: 'I can't let that go, it feels bad.' That is when I began making calls to get help. I know that I can't achieve my purposes all alone... and fighting the justice system... is no easy business. The only thing I see at the moment, I want to write a letter, I'm going to send it to a newspaper. I tell myself that it will at least make people think."

Finally, the victims who were assaulted by persons other than their spouses feel that the amendments dealing with husbands were needed.

> "Concerning the husbands, I think that's very good. Even if they live together, the man often thinks everything is allowed and forces his wife and, in fact, this is an assault.... It's good that the law woke up."

As for the deemphasising the sex-related aspects of sexual assault in the new legislation, it drew very little comment from the people we questioned. These comments pretty well sum up the general drift.

> "I have trouble imagining that a woman could assault a man. It's possible, but it surprises me."

In the view of some interviewees, this amendment is particularly relevant to incest situations where a mother assaults a son, or in cases of young boys victimized by men.

11.2.4 The resources

In this final section, we will be looking at victims' experiences and impressions of medical services, counselling services and other community resources.

11.2.4.1 Medical services

This first stage outlining reactions to medical services divides up into three components· relations with hospital workers, contact with the doctor, and the experience of examinations with the medical/legal kit.

It must be remembered that most of the victims we interviewed had been referred to us by workers in hospital centres. Their opinions may therefore not be representative.

With one exception, all these victims needed medical treatment. For this, they were driven to a designated hospital by the police themselves or in an ambulance. As for the woman who was raped 12 years previously, she went to a medical centre on her own. As we have seen in an earlier section, the police department's current priority is transportation to hospital.

All our respondents were appreciated the atmosphere in medical establishments, which they described as warm. They found it important not to have to wait in emergency with other patients when they went to the designated hospital. As they emphasize, sexual assault victims arrive at the hospital in a state of shock and this very fact means that they would feel ill at ease in the middle of a group. Being isolated in a little room had a soothing effect on them.

Victims' relations with social workers and counsellors

Shortly after she arrives at the clinic for sexual assault, the victim meets her counsellor. This initial contact with the counsellor is reassuring and soothing for the assaulted party. All our interviewees say that the workers are very cordial and particularly reassuring. It seems that relations between the two parties are easily established and very constructive.

> "I found it very good to get appropriate assistance because she was a great support to me. Otherwise, I don't know, I might have thought about suicide or things like that. Actually, I did think about it, but I took steps to get out of that."

In addition to soothing victimized patients, the workers explain the nature and purpose of the examinations they will undergo. Most respondents also say that the counsellors told them about the consequences of laying charges and sometimes urged them to take this step.

> "The worker asked me if I was laying charges. We talked about this and she explained all the implications that could come from not laying charges. Psychologically, how I would feel, that she had already met victims who didn't lay charges and could have done so..."

These workers also put sexual assault victims in touch with the various resources and tell them about the course they will have to follow if they do lay charges. It does seem, however, that this information is quite general, and some interviewees comment that they would have liked to be given more specific information.

> "The service was very good, but I think there was a lack of expertise that was harmful to me, not just in terms of the trial. Like when I needed money, benefits to compensate for the fact that I wasn't able to work, one of them told me to go to Health and Welfare and another to Unemployment Insurance. I didn't know where to go any more. So there was a lack of information in this area. As far as the court was concerned, I could get almost no information on that score. They knew roughly how it went, but not because they had been in contact with lawyers, it was mainly because they had heard talk by victims. I found that the information was not specific enough."

One interviewee even raised the problem of lack of coordination among the social, medical and legal practitioners.

> "Often, I wanted to speak with the detective, I tried to reach him to find out what was going on, but I didn't succeed in reaching him. I asked questions at the hospital and they couldn't answer either. There, I was often left with questions outstanding as no one who could answer them. I saw that there was a lack of communication among all these services."

All the victims who were given psychological care pronounced themselves highly satisfied. The relationship was beneficial in every case. As a rule, despite that, there was a shortage of information. Satisfaction is the main feeling expressed by those who had personal counselling.

Contact with the doctor

Relations with the doctor in charge of a case seemed to be excellent. Most of those questioned stress that the doctor was calm and took the time to explain what he was doing.

> "The woman doctor was very calm and I found that soothing. She explained absolutely everything to me. Whenever she was placing a hand on my thigh or elsewhere, she would tell me about it. So there was no shocking contact."

One victim, on the other hand, said that the woman doctor performing the examinations was rather aggressive, but apologized afterwards.

One victim who was examined by a male doctor remarks that she found it very hard to submit to the tests.

> "I didn't want to know anything.... I think that when it happens, I have the impression that you see your assailant again. I think it comes back, it's not the doctor you're seeing any more. If he had been a woman, it would have been the same because I can't say a thing, the doctor was super. Maybe it's because it had all just happened. In any case, personally, when he did the examinations, it wasn't the doctor I was seeing there..."

Another victim, dealt with initially by a man, asked to be taken care of by a woman doctor. Her request was granted.

According to our interviewees' statements, the quality of medical care seems to have been excellent. This assertion sums up the group's comments fairly well:

> "The medical services were super."

The medical/legal procedure

Since the medical/legal kit was dealt with in an earlier chapter, there is no point in describing it here. Remember, however, that it has existed in Quebec since 1984 and that a new, improved version appeared in 1987.

Most of the victims we met went through the medical/legal tests. They found these examinations distressful, lengthy, exhausting and, in some cases, frightening. Nevertheless, they say, they were not physically painful.

> "They explained things well to me. I was totally indifferent until they put me through the gynaecological test. At that point, I panicked... everything came back to me. I didn't care for that.... I was angry at having to go through these tests there as well, you'd say it was mixed up with the feelings I was having."

The medical/legal examinations seem to be performed with understanding.

> "There was always someone talking to me, explaining something."

They still prove distressing for victims. And although they are hard to go through, sexually assaulted persons submit to these tests, probably with the assurance that this is the way to prove their assailant's guilt and are, thus, a necessary evil.

11.2.4.2 Counselling services

Most women we questioned turned to psychological care after the assault. When the interviews took place, in fact, they were still having weekly sessions with their counsellors. Most of them were being followed up by the workers at Hôtel Dieu. A few were consulting a psychologist recommended by a social services centre or a personal contact. It must be remembered that we recruited most of our sample through the Hôtel Dieu Service for Victims of Sexual Assault.

These victims are appreciative of the follow-up and feel that it is necessary and salutary. Not all of them, however, dealt with the nature of the assistance received, but we may add that they had no particular expectations of their therapy.

11.2.4.3 Other resources

Beyond the services available from the designated hospitals, there are aid centres for sexual assault victims. Not one of our respondents used them, but then our sample is unrepresentative.

Most victims had the right to compensation under the Crime Victims Compensation Act (IVAC). One of them said that she had no right to compensation because her assault was seen as a work accident. In her case, the Commission de la santé et de la sécurité au travail (Workmen's Health and Safety Board) paid the benefits.

With one exception, respondents were aware that this resource existed. As a rule, they were given their compensation application form at the hospital. Workers also told victims what procedures to follow and sometimes helped them fill out the questionnaire.

One woman admitted that she had waited some time before deciding to apply. For her, this was an difficult task and too much to face, partly because of having to supply details on the assault.

In another case, the questionnaires were duly completed, but there was apparently quite a long delay between the application and the initial cheque.

Moreover, most victims forwarding compensation applications to IVAC said that they found the forms complicated to fill out.

In short, some victims are hesitant about filling out the questionnaire because they do not want to tell their stories all over again, but on the whole, those who applied seem satisfied with the outcome.

11.2.5 Conclusion

This portion of our study demonstrates that very few victims alert peace officers personally. Often, someone else does so on their behalf. When they agree to inform police about the events they have gone through, victimized persons are not necessarily anxious to lay an information. Most of the time, their sole intention is to protect themselves. Therefore, the police will check with them to see whether they want to see action on their complaints.

Relative to previous years, police attitudes towards sexual assault victims seem to have improved. On the whole, peace officers seem sensitive to the traumas that victims are going through, and they offer assistance and support.

In terms of the judicial process, it emerges that those having to go through it have little knowledge of procedures and almost all are worried about the conduct of a process about which they know virtually nothing.

It appears that the prospect of testifying arouses anxiety, since those who were not called to court expressed relief and those who were called to appear were not thrilled by the experience. The main conditioning factors are fear of being unable to give an accurate account of events, fear of losing self control and worry about seeing the assailant again.

Once their evidence has been given, the initial anxiety is replaced by disappointment and humiliation. It seems, in fact, that the examinations were distressful and the cross-examinations often threatening, especially at the trial. The victims are disillusioned and come away with the feeling of having shouldered a heavy burden without getting anything at all in return.

In addition, defence lawyers still seem to be placing the emphasis on consent to support their cases, and victims often got the impression that this approach was the means of discrediting their testimony. These witnesses say that they were treated like defendants and often resented a kind of harassment by defence counsel.

On the other hand, victims view the crown attorneys as "their lawyers" and they are resentful if "their lawyers" do not provide an appropriate defence. Victims wanted to meet with the crown attorney prior to the hearings, but those who got this privilege were rare. What is more, victims agreeing to tell their stories to the court take a dim view of the fact that they are seen solely as witnesses to a criminal offence.

And what are we to say of plea bargaining? The victims do not understand it at all. These secret compacts between lawyers are a source of irritation for them, conspiracies to be rooted out. Sentences are seen as too lenient. Even though victims are ambivalent about detention, it is in fact virtually the only penalty that they find acceptable.

One of the terms most frequently used by victims to describe their experience of the judicial system is "loneliness." "I was all alone," they say over and over again. The other recurrent notion is that of powerlessness.

Looking at victims' impressions of their medical treatment, we note that they are excellent. Hospital workers showed these sexually assaulted persons warmth and understanding. Though difficult for victims, the medical/legal examinations seem to have been performed with a great deal of understanding.

Reactions to Bill C-127 are generally quite positive. Victims still feel, however, that the new legislation does not give enough weight to the sexual dimension of the assault, which is just as important, if not more important, than the dimension of physical violence. In addition, it emerges that Bill C-127 has brought no specific change in terms of charges against husbands, as these assailants come out with either minor sentences or acquittal.

At the outset, then, police, medical, social workers and counsellors who treat victims with respect and kindness, urge them to go all the way in the court system. It is afterwards that satisfaction dims, as proceedings go ahead. In fact, the victims who become involved in the judicial process experience it as a second victimization that makes them regret having set the machine in motion.

12.0 CONCLUSION

Most of the conclusions reached in this study have already appeared in earlier portions of the report. We will now resume these summaries in more systematic order, referring to those earlier chapters.

Our conclusion will have four parts:

1) reiteration of the objectives of the 1983 reform (Bill C-127);

2) a caveat with respect to interpreting our results;

3) our main results; and

4) our general conclusions.

12.1 Objectives of the 1983 Reform

The new reform's objectives were made explicit in a Department of Justice Canada information paper published in 1980. These objectives are stated in the form of four basic principles:

- The protection of the physical and psychological integrity of the person. This objective involved explicit recognition in the reform that a sexual assault was primarily an attack on the victim's physical and psychological integrity. The prime victim of a sexual assault is not the state, but a human individual.

- The protection of groups that are especially vulnerable to sexual assault, such as children or mentally handicapped persons.

- The safeguarding of public decency while respecting the right of consenting adults to have sexual relations.

- The elimination of a number of areas of discrimination. Specifically, persons should be able to be recognized as victims or perpetrators of sexual assault, regardless of gender or civil status. In plain language, this principle entailed enlarging the legal definition of sexual assault victim to include male persons and spouses (in reality, mainly wives), and making women liable to conviction for such assaults.

To these publicly stated objectives or principles must be added two corollaries. If the victim of a sexual assault is acknowledged as being a flesh-and-blood person, it follows that we will have to avoid the assailant's trial becoming that of the victim, who would then be doubly "victimized," first in the sexual assault and then in the criminal proceedings.

The lawmaker's intention here was immediately obvious in the new rules of evidence with respect to sexual offences. For example, there are provisions restricting the use to be made in court of the victim's previous sexual behaviour.

Finally and clearly, if the reform's objective was to extend the protection of the law to groups that were not getting it or were getting less of it, the result should be the arrest and indictment of a greater number of offenders.

The nature and significance of the legislative changes brought in by Bill C-127 are outlined in detail in the initial chapter of this report.

12.2 Interpreting the Results

Under the terms of reference of the contract with the Department of Justice Canada the goal of our research was to "obtain the most complete database possible for evaluating the impacts of the provisions in Bill C-127 concerning sexual assault." The study had two dimensions, one descriptive and the other evaluative. The descriptive aspect of the study (the assault and those involved in assaults, current practice, the viewpoints of those involved, services available...) presented no insoluble problems. The evaluative dimension, on the other hand, involved some insurmountable difficulties that must be considered when it comes to interpreting the results.

Strictly speaking, our study did not achieve its evaluative goal. We might cite time and budget limitations, but they are not the main reasons. Rather, our research was conducted after the fact. For a number of topics studied, it was impossible to know the precise situation prevailing before Bill C-127 came into effect and, thus, to make rigorous "before-after" comparisons. To cite only one example, the in-depth interviews were conducted in 1988, while the reform dated from 1983. Would police have been as understanding towards victims, if we had met them in 1981? When the jurists interviewed in 1988 perceive an increase of severity in the court although our quantitative data do not support this impression, are they mistaken or are they basing themselves on more recent experience?

Another major difficulty arose: the brief space of time between the time periods studied. If we note no significant change between 1981-1982 and 1984-

1985, does this mean that the reform achieved nothing, or might it be that the changes were not yet perceptible?

Finally, our researchers had no way of verifying the direct cause-and-effect connection between Bill C-127's coming into effect and the changes they observed. Many of our interviewees asked the question: are these changes due to the law reform or to other factors, such as changing attitudes? Our study cannot answer this question.

Before expressing our conclusions, we wanted to state their limitations. We have just noted the main limitation; let us now cite two others.

Like all provisions in the Criminal Code, Bill C-127 is little known to the public and even, in a number of respects, to workers in this area, in whatever part of the system they may be active. This is why it was hard for these people to say whether the reform had borne fruit or not.

The criminal system can be described as an obstacle course in which each barrier acts like a filter to keep certain cases from moving on to the next stage in the process. For example, not all complaints received by police will result in an indictment and at the end of the process, if there is a guilty verdict, in an offender's imprisonment. Since our data collection involved a very considerable quantity of information, these filtering effects are perceptible, and we note the absence of a number of values from one group of cases to another. These missing data frequently prevented us from carrying out refined statistical analysis.

With these reservations, we will now move on to the statement of our conclusions.

12.3 Main Results

At this point, we will try to adhere to the order of events that may follow a sexual assault.

12.3.1 The report to police

From our examination of the aid centre files, remarks gleaned from police and statements by those working with victims as well as the victims themselves, we may conclude that fears about reporting and, more particularly, about laying charges are still very much with us. All the reasons raised in our review of the literature were cited: shame, guilt, fear of reprisals, uneasiness about the justice system, inability to overcome the psychological block. Also noted were the special problems that a married woman may experience, if she reveals the assault to her husband. On the other hand, the desire to protect potential victims moves a number of people to report.

Just over half of assaults are apparently reported to police (Canadian Victimization Survey), and in almost 50 per cent of these cases, the event is reported by persons other than the victims. One change that deserves to be mentioned, even though it is not very significant statistically, has to do with victims' determination to report their assaults. Before 1983, victims reported the offence to police in 43.6 per cent of cases. This percentage rose to 56.2 per cent after 1983.

When they approach an aid centre or "designated" hospital, victims are informed of their right to lay charges along with the advantages and drawbacks involved in doing so. some then change their minds and call the police. This aspect of their counselling activity is apparently especially hard on health and social workers and counsellors.

Since 1983, we note a change in the client group reporting: more victimized minors and more assaults involving persons who know one another. The number of male victims has not risen, however, or the number of victimized spouses, or the number of suspects.

12.3.2 Police action

The Montreal Urban Community Police Department has issued instructions to its police officers since the 1983 reform, and has also held training sessions. Our data do not enable us to make an assessment of the results of these actions, for they are inconsistent with one another. As a rule, police seem to be obeying the spirit of the instructions but not the letter. As for the training sessions, few police officers remember them. All things considered, changes in the police seem to have occurred very gradually, particularly through changing attitudes.

Not only did police practices show no significant improvement in the wake of the reform, but activities connected with the reform's objectives seem to be occurring less frequently. For example, transportation of victims to hospital declined slightly after 1983. Similarly, police have been refraining from giving the victim advice or assistance more often since the reform.

Regarding the decision to pursue a matter or shelve it, police seem to have made little use of their discretionary power to abandon cases in spite of the existence of evidence. The fundamental factor in this decision is the ability to identify a suspect. This result is altogether unsurprising and is consistent with research done on police (especially by Richard V. Ericson). Moreover, police abandon very few cases without carrying out an investigation, an exercise that can sometimes be cut short by a subsequent confession by the victim to having fabricated the whole thing or by her lack of credibility. In fact, almost all complaints gave rise to an information when a suspect could be identified, and this happens mainly when those involved in a sexual assault know one another.

We, therefore, found no serious basis for the charges of sexism that are sometimes made against the police. Their conduct since 1981, though not exemplary, seems to have avoided the pitfalls of discrimination against women. It did strike us, however, that information tended to downplay the seriousness of offences in all cases where weapons were not present.

Of complaints overall, 30 per cent led to the identification of a suspect and the bringing of an information. The percentage is similar for both periods studied, though a little higher after 1983, reflecting the increased incidence of reports by young people and victims of persons known to them.

12.3.3 Court action

This is where the reservations concerning the case filtering process, voiced in the preamble to our conclusion, apply the most.

The main result we reached can be stated as follows: to the extent that we were able to verify this, the 1983 reform (Bill C-127) did not substantially change the conduct of the judicial process or its outcome. Information were sent in greater numbers to the Court of Sessions of the Peace (and possibly as well to the Youth Court, which fell outside our investigation), and these information most often involved victimized minors and persons involved in a sexual assault who knew one another.

Since the reform, preliminary inquiries are ending a little more often with committals for trial, since discharges, dropped charges and stays of proceedings are a little less common than before. It may be that the evidence brought in support of charges is of superior quality. If this is so, can we attribute it to use of the medical/legal kit? This does not seem very likely, since the evidence obtained through use of the kit is rarely produced. Nevertheless, the crown attorneys told us that they take it into consideration even when the results of the medical/legal investigation are not filed. It may also be that investigating officers and crown attorneys are briefing their witnesses more fully, particularly the victims, which would result in more committals for trial.

In 45 per cent of cases, the defendant entered a guilty plea. This points to a difference that has always existed between sexual offences and other types of offences, namely the incidence of guilty pleas, which is generally lower for sexual offences than for other offences, e.g., robbery. The number of these pleas has not varied appreciably since the 1983 reform.

Contrary to expectations, the percentage of guilty verdicts has fallen slightly since 1983, while acquittals have increased. This seems to be due to the fact that cases were formerly settled more often in the preliminary stages of the process, by discharges, dropping charges and stays of proceedings, since victims were more reluctant to testify and crown attorneys seemingly less insistent on the victim's cooperation.

In all, 61 per cent of cases led to a conviction as opposed to 14 per cent acquittals and 25 per cent other decisions. Factors positively associated with conviction are the presence of weapons, the tender age of the victim, and the fact of the assault having been committed by a single individual.

Since 1983, sentences imposed by judges have been a little heavier. This severity has more to do with the nature of the sentence than its quantum. For example, since 1983 there have been more individuals sent to jail for sexual offences. The length of prison sentences, however, has remained relatively stable. Note that defendants are a little older and are more likely to have previous records.

The main factors in determining sentence are the nature and seriousness of the act. Charges of aggravated sexual assault or sexual assault with a weapon (relatively rare) almost always lead to a prison sentence. Moreover, we have seen that, for all the legislator's intent to emphasize violence rather than sexual content: cases where there has been vaginal penetration give rise to heavier sentences than touching or sodomy, regardless of the degree of violence used or the aftereffects suffered by the victim.

The other factors conditioning the weight of the penalty are: the assailant did not know the victim, he had a previous record, and the victim was over age 18.

Finally, judicial practices with respect to victims of sexual assault have not been altered significantly during the two periods studied.

The only change we observed in this regard has to do with publication bans, which have been commoner since 1983. Since these orders are most often made at the request of the prosecution, we may assume that the legislator's objective of humanizing the justice system for victims is being reached. As for the new rules of evidence, the view of the jurists, social workers, counsellors and victims is that they have meant little change in existing practices, since it is still possible to communicate information to the court concerning the complainant's sexual history or recent complaint. From now on, this should occur with greater subtlety, and our data suggest a gradual change in attitudes, though we could not date this from 1983.

12.3.4 Medical and counselling involvement

This involvement seems adequate with two minor reserves. First of all, the available resources are insufficient and not widely known -- given the lack of means. Second, the training of workers in terms of the legal system is insufficient. This deficiency is not being corrected by the crown attorneys or other legal counsel who are readily available and could work free of charge.

12.4 General Conclusions

We will be dealing with two points: the achievement of the objectives of the reform, criticisms and suggestions.

12.4.1 Achievement of objectives

It is hard to measure the extent to which the objectives of 1980 have been achieved. There are two reasons for this. The first lies in the very general nature of the objectives. The second arises from the relatively short time that has elapsed since the reform concerning sexual offences was carried into effect.

In spite of these reservations, we can try to quantify the extent to which the initial objectives have been achieved.

The priority attached to traumatic assault

According the first of the principles stated above, sexual assault should be dealt with as a painful attack on the physical integrity of the person rather than as a purely judicial event or attack on public decency.

This principle does not lend itself to quantification. We can state, however, that the assistance provided by police and aid centres is consistent with it.

The overall finding that emerges from our interviews with victims, however, is that the judicial process continues to operate at a considerable distance from the actual reality that is experienced by a sexual assault victim. Putting it plainly: victims do not recognize themselves as such in the proceedings that spring from the sexual attack to which they were subjected. Victims' discontent is a conclusion reinforced by our interviews with police officers and jurists, as well as our court observations. Victims continue to feel that they are in the prisoner's dock, particularly when they are subjected to narrow cross-examination that is designed to downplay their credibility.

Protection of the most vulnerable groups

The nature of the cases and our observations have not enabled us to verify whether the mentally handicapped were better protected. The number of cases involving victims under age 16, however, has risen significantly. To the extent that we view expanded action by the criminal system as generating protection, we have reason to conclude that the trend in proceedings brought against persons sexually assaulting the young is moving towards reinforcement of the protection available to them. It is not possible to evaluate specifically the extent to which this increase relative to protection is perceived.

The safeguarding of public decency while respecting the rights of consenting adults

Although 1985 saw a marked increase in cases handled by police, we have seen no indication that the sexual freedom enjoyed by Canadians was abridged by the new legislation. We must stress the fact, however, that this objective of maintaining a balance between the protection of public decency and the preservation of civil liberties is a very substantial one. In any event, there is nothing to even suggest that since the 1983 legislation, the hunt has been on for the sexual offender.

Eliminating discrimination: desexualization

In this respect, we can speak of neither success nor failure. Victim and assailant profiles have remained essentially unchanged. It seems to be part of a certain order of things that men act and women submit when it comes to sexual assault. There has been no role reversal since 1983 and, indeed, such was not the objective of the reform. We should note, however, that wives and ex-wives have rarely laid charges, even though the law now allows them to do so. There may be grounds to get more information to the public and the representatives of the system.

Humanizing justice

Limited though they may have been, our court observations incline us to think that, in most cases, the examination of the complainant's sexual behaviour did not lead to the abuses denounced prior to implementation of the reform.

We do issue a reminder, however, that our observations were carried out within narrow time and frequency limitations and that they call for caution in drawing conclusions. This caution is especially called for in that, as we noted, wives and ex-wives testifying as victims in court felt they had been prey to a degree of discrimination. Additionally, all those interviewed, except for defence counsel, feel that going to court is a traumatic experience for victims of sexual assault, who get nothing out of it but problems with no compensating benefits.

12.4.2 Criticisms and suggestions

Our qualitative research, carried out through interviews with key informants (police officers, jurists, social workers, victims) and court observations, has enabled us to collect a large number of comments on the new legislation, as well as a considerable body of suggestions for improving the situation. Within the relatively limited scope of this conclusion, we cannot relay all of these suggestions. The reader can acquaint his/herself with them by reading the report. We will bring a few of the recommendations together here, however, in terms of their relevance to one aspect of the process or another.

Specialization of participants in the process

Police officers as well as jurists and victims have called for persons handling sexual offences to be more highly skilled. The police call for added training. The jurists suggest building teams (at all levels) to specialize in dealing with cases of sexual assault. This reform is now in progress.

These suggestions have to do with both the physical environment and the services provided by staff. There is also a wish to have courtrooms earmarked for cases involving sexual assaults, and that these be arranged in such as way as not to make the victim's appearance before the court an ordeal (avoid, for instance, the victim and her assailant having to wait in the same corridor for the hearing to begin).

Protection for victims

The last measure that we suggested (special court rooms) already had to do with protecting the victims and mitigating the potentially traumatic effects of their testifying in court. It has also been suggested that they be able to testify under shelter from their assailant's eye through the use of screens or some other device (e.g., video cameras). Such a measure, which has been implemented by Bill C-15 for complainants under age 18, might be extended to all victims. In fact, there is nothing to suggest that older victims are less embarrassed or less traumatized than minors are by having to testify in front of their assailants.

Some police officers recommended that they be in a position to provide the victim with more systematic follow-up on the progress of the case. Other policemen suggested that in certain cases, the victim be spared from testifying in the preliminary inquiry (the investigators' notes should be enough to meet the requirements of this preliminary proceeding). Implementation of this proposal should also involve a legislative measure to amend the rule of hearsay.

Finally, it would seem desirable for the victim to be better prepared for the sometimes rigorous experience of cross-examination. Representatives of the crown could attend to this briefing, either in a personal meeting with the victim to be held well before she testifies, or in an information session for all witnesses wanting to know more about the judicial process and, thus, be better prepared.

Sentences

A number of the persons we met criticized the marked discrepancies between sentences imposed for sexual offences of a similar nature. They all wanted steps taken to rectify this situation without sacrificing the need to distinguish between various matters when the differences are real.

These criticisms echo the concerns expressed by the Daubney Committee (1988). We were also informed that humanization involves follow-up on cases and increased coordination among all authorities involved. In particular, there would be cause for improving relations between justice agencies and health services.

12.4.3 The impact of Bill C-127

All those interviewed, except for the victims who were naturally unable to make the comparison, told us that great progress had been made. The justice system is handling victims of sexual assault much better than before. Is this improvement due to Bill C-127? Neither the qualitative data nor the statistical results allow us to confirm that it is. Too many other factors come into play, and the differences found between the brief periods studied are minimal.

In our view, we must conclude that Bill C-127 confirmed and supported attitudinal changes without having created them. The spirit of the legislation was in harmony with a social development already under way, though the law's provisions may not entirely reflect the objectives that the legislator said he/she was after, and they are in only partial agreement with the suggestions made by the groups most concerned. Finally, remember that the data and interpretations presented here apply only to the Judicial District of Montreal.

APPENDIX A

RESEARCH REPORTS
FROM THE
SEXUAL ASSAULT EVALUATION PROGRAM

RESEARCH REPORTS
FROM THE SEXUAL ASSAULT EVALUATION PROGRAM

Stanley, Marilyn G., The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 1*, Department of Justice Canada, Ottawa: July, 1985.

Ruebsaat, Gisela, The New Sexual Assault Offences: Emerging Legal Issues, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 2*, Department of Justice Canada, Ottawa: July, 1985.

Roberts, Julian V., Sentencing Patterns in Cases of Sexual Assault, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 3*, Department of Justice Canada, Ottawa: 1990a.

Roberts, Julian V., An Analysis of National Statistics, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b.

Research Section, Department of Justice Canada, Overview, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 5*, Department of Justice Canada, Ottawa: 1990.

Rowley, Susannah W., A Review of the Sexual Assault Case Law, 1985-1988, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 6*, Department of Justice Canada, Ottawa: May, 1990.

Roberts, Julian V., Homicide and Sexual Assault, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 7*, Department of Justice Canada, Ottawa: 1991.

Working Documents

Baril, Micheline; Bettez, Marie-Josée; Viau, Louise, Sexual Assault Before and After the 1983 Reform: An Evaluation of Practices in the Judicial District of Montreal, Quebec, Department of Justice Canada, Ottawa: November, 1988, WD1991-2a.

Ekos Research Associates Inc., Report on the Treatment of Sexual Assault Cases in Vancouver, Department of Justice Canada, Ottawa: September, 1988a, WD1991-3a.

Ekos Research Associates Inc., Report on the Impacts of the 1983 Sexual Assault Legislation in Hamilton-Wentworth, Department of Justice Canada, Ottawa: July, 1988b, WD1991-4a.

J. and J. Research Associates Ltd., An Evaluation of the Sexual Assault Provisions of Bill C-127, Fredericton and Saint John, New Brunswick, Department of Justice Canada, Ottawa: November, 1988, WD1991-5a.

University of Manitoba Research Ltd., Report on the Impact of the 1983 Sexual Assault Legislation in Lethbridge, Alberta, Department of Justice Canada, Ottawa: August, 1988a, WD1991-6a.

University of Manitoba Research Ltd., Report on the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba, Department of Justice Canada, Ottawa: September, 1988b, WD1991-7a.

CS/RESORS Consulting Ltd., The Impact of Legislative Change on Survivors of Sexual Assault: A Survey of Front Line Agencies, Department of Justice Canada, Ottawa: November, 1988, WD1991-8a.

BIBLIOGRAPHY

Books and Articles

Baril, M. (1983). L'envers du crime (The Wrong Side of Crime). Montreal: International Centre for Comparative Criminology, University of Montreal.

Boyle, C. (1985). "Sexual Assault and the Feminist Judge." Canadian Journal of Women and the Law, 93-96.

Canada, Department of Justice (1980). Information Paper: Sexual Offences against the Person and the Protection of Young Persons. Ottawa.

Canada, Solicitor General (1985). The Canadian Urban Victimization Survey. Ottawa.

Clark, L.M.G.; Lewis, D.J. (1976). "A Study of Rape in Canada: Phases 'C' and 'D', Report to the Donner Foundation of Canada." Unpublished.

Clark, L.M.G.; Lewis, D.J. (1977). Rape: The Price of Coercive Sexuality. Toronto: Canadian Women's Educational Press.

Comite de liaison de la cour des sessions de la paix de Montréal (Liaison Committee of the Montreal Court of Sessions of the Peace, 1987). Minutes of the meeting of May 4, 1987. Unpublished document.

Daubney, D. (1988). Report of the Standing Committee on Justice and the Solicitor General: Review of Sentencing, Conditional Release and Related Aspects of the Correctional System. Ottawa: Supply and Services (Issue No. 65).

Ericson, R.V. (1982). Reproducing Order. A Study of Police Patrol Work. Toronto: University of Toronto Press.

Ericson, R.V.; Baranek, P.M. (1982). The Ordering of Justice: A study of accused persons as dependants in the criminal process. Toronto: University of Toronto Press.

Gibson, L.; Johnson, S. (1980). "A Situational Theory of Rape," 22, Canadian Journal of Criminology, 51.

Giroux, J. et al. (1981). "Les causes de viol entendues dans le district judiciaire de Montréal, entre 1975 et 1978: une enquête rétrospective" ("Rape Cases Heard in the Judicial District of Montreal between 1975 and 1978: a retrospective inquiry"). Canadian Journal of Criminology, vol. 23, no. 2, 173-190.

Gravel, S. (985). Le traitement judiciaire des délits d'agression sexuelle dans le district de Montréal (The Judicial Handling of Sexual Assault Offences in the District of Montreal). Master's thesis, Faculty of Advanced Studies, University of Montreal, 241 pp.

Haban, J. (1983). Victims Before the Law. Toronto: Butterworth.

Holmstrom, L.L.; Burgess, A.W. (1978). The Victim of Rape: Institutional Reaction. New York: Wiley.

La presse. "Deux individus se défilent le même jour et les prévenues sont donc libérés" ("Two Individuals make off the Same Day and the Prisoners are Discharged"). Montreal, December 2, 1983, p. A-10.

Macdonald, S.C. (1985). "The Comparability in Sexual and Non-sexual Assault Case Treatment: Did Statute Change meet the Objectives?" Crime and Delinquency, vol. 31, no. 2, 206-222.

Maguire, M. (1980). "The Impact of Burglary upon Victims." The British Journal of Criminology, 20 (3), 261-275.

Montreal Urban Community Police Department (1982). Statistics on Criminality. Montreal.

Shaplaud et al. (1984). The Victim in the Criminal Justice System. Oxford: Oxford University Press.

Stanley, M.G. (1985). The Experience of the Rape Victim with the Criminal Justice System prior to Bill C-127. Ottawa: Supply and Services.

Legislation and Jurisprudence

Canadian Charter of Rights and Freedoms Canada Act, 1982, Appendix B, 1982 (R.-V), c. 11.

Young Offenders Act, S.C. 1980-81-82-83, c. 110.

Juvenile Delinquents Act, R.S.C. 1970, c. J-3.

Crime Victims Compensation Act, R.S.Q., c. J-6.

An act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125. (Bill C-127, assented to October 27, 1982, 1st Session, 32nd Parliament).

An act to amend the Criminal Code and the Canada Evidence Act, S.C. 1987, c. 24 (Bill C-15, passed June 23, 1987, 2nd Session, 33rd Parliament).

Chase v. R. (1984). 13 C.C.C (3d) 187 (N.B.C.A.).